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COMMONWEALTH OF PENNSYLVANIA

THE COMMISSION ON
CONSTITUTIONAL AMENDMENT AND REVISION

Created by the Act of June 4, A. D. 1919, P. L. 388

JOURNAL
OF
PROCEEDINGS



VOLUME 1.

HARRISBURG, PENNA.
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1920

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THE COMMISSION ON
CONSTITUTIONAL AMENDMENT AND REVISION

Members:

William I. Schaffer, Chairman
George E. Alter
Hampton L. Carson
John P. Connelly
Thomas DeWitt Cuyler
Charles H. English
John S. Fisher
Edward J. Fox
James Gay Gordon
John P. Kelly
Vance C. McCormick
Mrs. John O. Miller
R. L. Munce
A. Mitchell Palmer (resigned)
George Wharton Pepper
William Perrine
Gifford Pinchot
James H. Reed
Isaac Sharpless (deceased)
Edgar Fahs Smith
Edward J. Stackpole
Mayer Sulzberger
Francis Newton Thorpe
Chester J. Tyson
John A. Voll
Mrs. Barclay H. Warburton
William B. Wilson (resigned)

William Draper Lewis, Secretary
Matthew H. Taggart, Assistant Secretary

ਅੰਤਰਿਕਸ਼ਿਤ
ਅੰਤਰਿਕਸ਼ਿਤ



PROCEEDINGS

Senate Chamber,
Harrisburg, Pa., Tuesday, December 9, 1919.

10 o'clock, A. M.

Hon. WILLIAM I. SCHAFFER, Chairman. The hour fixed for the meeting of this Commission having arrived, the Commission will be in order.

We will be led in prayer by the Rev. Dr. Lewis S. Mudge.

PRAYER.

The Rev. Dr. Lewis S. Mudge, pastor of the Pine Street Presbyterian Church, Harrisburg, then offered the following prayer:

Almighty and ever-blessed God, King of Kings and Lord of Lords, Thou who doth dwell in light ineffable and glory unapproachable, in whose sight even the stars of heaven are unclean, we bow before Thee with reverence. Thou art infinite justice, holiness, goodness and truth. Thou hast written Thy law in nature, on the fleshy tablets of men's hearts, and in Thy most Holy Word. Open Thy law to these Thy servants, who have gathered to perform this high duty. Make them familiar with Thy holy will. May they be so guided that they shall write into the fundamental law of this state an expression of Thy purposes free from all prejudice and partisanship. Enlighten them with Thy truth. Grant that they may desire to discharge the duties committed unto them with strict fidelity.

Look with loving favor upon the President of these United States, upon all who are associated with him in legislative, executive or judicial functions. Bless the Governor of this great commonwealth and all those who join him in maintaining its honor and purity. Hasten the coming of universal peace.

Bless Thy holy law to all the nations of the earth, and may the day soon come when that law shall be written everywhere, not only in the statute books, but in the thoughts, words and deeds of men.

Most gracious God, by whose favor alone we can do that which is pleasing in Thy sight, favor us now with Thy presence, continue with this august body as from day to day it gathers, and may the outcome of its deliberations be the glory of Thy name, the honor of this commonwealth, and the hastening of the coming of the King of Kings.

And unto the Father, and unto the Son, and unto the Holy Spirit, the Triune God, we will ascribe all honor, and power, and majesty, and dominion, and might, world without end. Amen.

ACT CREATING COMMISSION.

The **CHAIRMAN**. This Commission is created by authority of an act of the general assembly of this commonwealth, which is as follows:

AN ACT

Providing for the creation of a commission to study and to report to the general assembly upon the subject of the revision and amendment of the Constitution of this commonwealth; prescribing its powers and duties; and making an appropriation.

Section 1. Be it enacted, &c., That twenty-five citizens of this commonwealth, appointed by the Governor, are hereby constituted a commission to be known as "The Commission on Constitutional Amendment and Revision." The Governor shall designate one member of the commission as its chairman. All vacancies in the commission shall be filled by the Governor.

Section 2. It shall be the duty of the Commission on Constitutional Amendment and Revision to study comprehensively and in detail the provisions of the present Constitution in the light of modern thought and conditions, with especial view of the necessity or advisability of changing or omitting any such provisions, in order to obtain and secure for the people of this commonwealth a form of government best suited to their needs and most conducive to their welfare. If the commission find a change in the Constitution advisable, it shall determine the best means of effecting such change, whether by amendment of particular sections or articles or by general revision.

The commission shall report to the general assembly at its next session of one thousand nine hundred and twenty-one, not later than the first Monday of February. The report shall contain in detail such recommendations as to the continuance, discontinuance, or modification of existing provisions, or the adoption of new provisions, as the commission, from its investigations and study, shall deem advisable and proper. The report shall further contain drafts of any proposed amendments, or may contain the draft of a general revision.

Section 3. The members of the commission shall receive no compensation, but shall be reimbursed for all expenses necessarily incurred in the performance of their duties.

Section 4. The commission shall, with the consent of the Governor, have power to employ one or more secretaries, necessary stenographers, and clerks, and such attorneys, investigators, and experts, as it may deem necessary.

Section 5. The heads of the several departments, bureaus, and commissions of the state, and of the municipal divisions of the state, are hereby directed to co-operate with the commission, and to render it such assistance as will not interfere with the proper conduct of the respective departments, bureaus, and commissions.

Section 6. Rooms in buildings owned or leased by the commonwealth shall, as far as possible, be available for the use of the commission. The Board of Commissioners of Public Grounds and Buildings shall provide suitable quarters at the State Capitol for the use of the commission and its employees.

The necessary printing and binding shall be done by the Department of Public Printing and Binding on the order of the chairman.

Section 7. The sum of sixty thousand dollars (\$60,000), or so much thereof as may be necessary, is hereby specifically appropriated for the actual and necessary expenses of the commission in performing the duties as herein provided. Payment of all money shall be on the order of the chairman of the commission and on warrant of the Auditor General.

APPROVED—The 4th day of June, A. D. 1919.

WM. C. SPROUL.

CERTIFICATE OF MEMBERSHIP.

The Secretary of the Commonwealth, Hon. Cyrus E. Woods, was then introduced.

SECRETARY OF THE COMMONWEALTH WOODS. Mr. Chairman: I have the honor to present a list of the members of The Commission on Constitutional Amendment and Revision, appointed by the Governor under the authority of the act of assembly approved June 4, 1919. This list has been certified, under the Great Seal of the Commonwealth of Pennsylvania, by me as Secretary of the Commonwealth of Pennsylvania.

The certified list is as follows:

In the Name and by the Authority of the
COMMONWEALTH OF PENNSYLVANIA,



COMMISSION ON CONSTITUTIONAL AMENDMENT AND REVISION.

Appointed by the Governor under the authority of the act of assembly approved June 4, 1919.

WILLIAM I. SCHAFFER, Chairman, Chester, Pa.
A. MITCHELL PALMER, Stroudsburg, Pa.
HAMPTON L. CARSON, Philadelphia, Pa.
JAMES H. REED, Pittsburgh, Pa.
WILLIAM B. WILSON, Blossburg, Pa.
EDGAR F. SMITH, Philadelphia, Pa.
EDWARD J. FOX, Easton, Pa.
THOMAS DEWITT CUYLER, Philadelphia, Pa.
GEORGE E. ALTER, Pittsburgh, Pa.
WILLIAM PERRINE, Philadelphia, Pa.
JOHN P. KELLY, Scranton, Pa.
ISAAC SHARPLESS, Haverford, Pa.
MAYER SULZBERGER, Philadelphia, Pa.
JOHN S. FISHER, Indianá, Pa.
EDWARD J. STACKPOLE, Harrisburg, Pa.
GEORGE WHARTON PEPPER, Philadelphia, Pa.
R. L. MUNCE, Washington, Pa.
JAMES GAY GORDON, Philadelphia, Pa.
GIFFORD PINCHOT, Milford, Pa.
JOHN P. CONNELLY, Philadelphia, Pa.
FRANCIS NEWTON THORPE, Pittsburgh, Pa.
CHARLES H. ENGLISH, Erie, Pa.
CHESTER J. TYSON, Floradale, Pa.
MRS. BARCLAY H. WARBURTON, Philadelphia, Pa.
MRS. JOHN O. MILLER, Pittsburgh, Pa.

Office of the

SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA,

Harrisburg, November 25, 1919.

Pennsylvania, ss:

I, Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania, having the custody of the Great Seal of Pennsylvania, do hereby certify, That the foregoing and annexed is a full, true and complete list of the members of "The Commission on Constitutional Amendment and Revision," duly appointed and commissioned by the Governor in accordance with the provisions of the act of 4th June, 1919, P. L. 388, as the same appears on file and of record in this office.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the state to be affixed, the day and year above written.

(GREAT SEAL)

CYRUS E. WOODS,
Secretary of the Commonwealth.

ROLL CALL.

The CHAIRMAN. From the list of members of the Commission presented by the Secretary of the Commonwealth, the roll will be called by the Clerk.

The roll was call by the Clerk and was as follows:

PRESENT—19.

Alter, Carson, Connelly, English, Fisher, Fox, Kelly, Miller, Munce, Pepper, Perrine, Pinchot, Reed, Stackpole, Sulzberger, Thorpe Tyson, Warburton, Schaffer (Chairman).

ABSENT—6.

Cuyler, Gordon, Palmer, Sharpless, Smith, Wilson.

OATH ADMINISTERED TO CHAIRMAN.

The CHAIRMAN. A quorum being present, the Commission will proceed with its organization and business.

The oath of office will be administered to the Chairman and members of the Commission by the Secretary of the Commonwealth.

The Secretary of the Commonwealth, Hon. Cyrus E. Woods, then administered the oath of office to William I. Schaffer, Chairman of the Commission, as follows:

You, William I. Schaffer, appointed and commissioned by the Governor of the Commonwealth of Pennsylvania to be a member and the Chairman of "The Commission on Constitutional Amendment and Revision" in and for the Commonwealth of Pennsylvania, do solemnly swear that you will support, obey and defend the Constitution of the United States and the Constitution of this commonwealth, and that you will discharge the duties of your office with fidelity; that you have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure your nomination or appointment, except for necessary and proper expenses expressly authorized by law; that you have not knowingly violated any election law of this commonwealth, or procured it to be done by others in your behalf; that you will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to your office, other than the compensation allowed by law. And so you do swear.

OATH ADMINISTERED TO MEMBERS.

The CHAIRMAN. The members of the Commission present will please present themselves at the bar in order that the Secretary of the Commonwealth may administer the oath of office to them.

The oath of office was then administered by the Secretary of the Commonwealth to Hampton L. Carson, James H. Reed, Edward J. Fox, George E. Alter, William Perrine, John P. Kelly, Mayer Sulzberger, John S. Fisher, Edward J. Stackpole, George Wharton Pepper, R. L. Munce, Gifford Pinchot, John P. Connelly, Francis Newton Thorpe, Charles H. English, Chester J. Tyson, Mrs. Barclay H. Warburton and Mrs. John O. Miller, as follows:

You, and each of you, appointed and commissioned by the Governor of the Commonwealth of Pennsylvania to be members of "The Commission on Constitutional Amendment and Revision" in and for the Commonwealth of Pennsylvania, do solemnly swear that you will support, obey and defend the Constitution of the United States and the Constitution of this commonwealth, and that you will discharge the duties of your office with fidelity; that you have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure your nomination or appointment, except for necessary and proper expenses expressly authorized by law; that you have not knowingly violated any election law of this commonwealth, or procured it to be done by others in your behalf; that you will not knowingly receive directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to your office, other than the compensation allowed by law. And so each of you do swear.

The above oaths were then signed by the Chairman and members of the Commission, respectively.

CHAIRMAN'S ADDRESS.

The CHAIRMAN. Ladies and Gentlemen of the Commission: I think it may be stated with a fair degree of assurance that no commission or body of any kind has been called into existence by the commonwealth, at least since the last Constitutional Convention, charged with more important duties or greater responsibilities than the Commission on Constitutional Amendment and Revision created by the act of June 4, 1919, which we are today as its members starting on its career.

Pennsylvania has had four Constitutions. The first, that of 1776, was formulated by a convention presided over by Benjamin Franklin. Its marked figures in addition to him were David Rittenhouse, George Clymer, George Ross and Thomas McKean. Four of its members, Franklin, Clymer, Ross and McKean, were among the immortals as signers of the Declaration of Independence. This Constitution was drafted when the great experiment of launching a free government in America was being undertaken. It marked governmentally the passing of the old proprietary government and the transition from colony to commonwealth.

The second was that of 1790, which took out of the Constitution of 1776 those features of it which were found not to be wise or workable. This convention really added a most important chapter to constitutional government, and gave to the commonwealth a body of organic law which served as a model for future state constitutions, not only in Pennsylvania, but in many of the other states. Its strong men were James Wilson, who played such a leading part in framing the Federal Constitution; Thomas McKean, Chief Justice of Pennsylvania; Thomas Mifflin, first Governor of Pennsylvania, Timothy Pickering, William Findlay, Albert Gallatin, Secretary of the Treasury of the United States; and William Lewis, who was one of the leading lawyers of that day.

The third attempt at constitution-making was that which produced the Constitution of 1838. The convention which framed it really only amended the Constitution of 1790, preserving that Constitution's main features. Its president was John Sergeant, famous as a lawyer in his day and generation; and its outstanding members were Charles J. Ingersoll, noted among his contemporaries at the bar; William M. Meredith, leader of the Philadelphia bar, Secretary of the Treasury of the United States, Attorney General of Pennsylvania and president of the Constitutional Convention of 1873; Daniel Agnew, afterward Chief Justice of Pennsylvania; and Thaddeus Stevens, great lawyer, great commoner, great American, great champion of liberty, undisputed leader of the lower house of Congress throughout the stormy period of the Civil War, who declined to sign the Constitution which he had helped to frame because it contained a tacit recognition of slavery.

The fourth Constitution, that of 1873, was largely the result of a public demand to correct the great evil of special legislation. It was drafted and adopted to meet the new conditions and problems which had arisen with the great growth of the state and its marvelous development coincident with and following the war. Its first president, William M. Meredith, died while serving in that capacity. He was succeeded by John H. Walker. It comprised in its membership the

state's strongest men of that time. Among its delegates sat Lin Bartholomew, silver-tongued, from Schuylkill; Jeremiah S. Black, Attorney General of the United States, Chief Justice of the Supreme Court of Pennsylvania, marked in Pennsylvania's and the nation's annals for all times; John M. Broomall, mentally gifted beyond most men, and member of Congress from the Chester-Delaware district throughout the Civil War; Charles R. Buckalew, profound lawyer, master of public questions; John C. Bullitt, framer of Philadelphia's city charter, under which that great municipality was governed for more than thirty years; Lewis C. Cassidy, subsequently Attorney General of Pennsylvania; Silas M. Clark, great judge, one of the ablest men who has sat on the bench of the Supreme Court of Pennsylvania; Andrew Gregg Curtin, Pennsylvania's War Governor, Minister to Russia and member of Congress, whose fame will endure; Theodore Cuyler, one of the leaders of the Philadelphia bar, whose son sits as a member of this commission; Samuel E. Dimmick, Attorney General of Pennsylvania; Mortimer F. Elliott, still living, legal pilot for America's greatest business enterprise, the Standard Oil Company; Henry Green, Chief Justice of the Supreme Court of Pennsylvania; Wayne MacYeagh, with intellect like a rapier, Attorney General of the United States, Foreign Minister, accomplished and cultured gentleman; Henry W. Palmer, subsequently Attorney General of Pennsylvania, and Congressman of the United States; Samuel A. Purviance, also Attorney General of Pennsylvania; John Stewart, of brilliant intellect, today still in full vigor, a justice of the Supreme Court of Pennsylvania; Harry White (turning to Judge White sitting on the rostrum with the chairman), officer of the Northern Armies, prisoner in Libby, judge of Indiana county, yet apparently in his prime at almost ninety; George W. Woodward, judge of the Common Pleas in Luzerne, Chief Justice of the Supreme Court of Pennsylvania, famed far and wide.

These men, and the other leaders in their several communities who made up this notable convention, framed the document which we are called upon to study and revise.

One of the striking things which will be made manifest to any student of our commonwealth's constitutional history is the great number of provisions in the present Constitution which have been carried forward into it in the precise language of the Constitutions of 1776 and 1790, going to show that the wise men who formulated those two codes of fundamental law clearly apprehended and understood what the real foundations of government are.

The Declaration of Rights in the Constitution of 1873 is the same charter of human liberty, almost word for word and section for section, as it appears in the Constitution of 1776, and, therefore, almost as it was in its original form when it sprang from the mind of John Somers, famous chancellor of William and Mary, when he stated the rights of free men in England in combating the tyranny of an arbitrary and oppressive king.

I think none of us entertain the thought today, when the world is troubled and ill at ease, and when our country is being looked to by all the rest of the world to steady it, that wise provisions in our organic laws are to be set aside, because they are time-honored; but, on the contrary, those which great exigencies and trying times have

demonstrated to be wise and just, beneficent and all-comprehensive, are to be held on to with a firmer grip.

As I construe the legislative mandate in the act creating our Commission, we are not to be iconoclasts in working out the problems which are submitted to us; but, in the light of the garnered wisdom of the ages and of modern-reasoned thought and of our own and other state's experiences, with the new conditions which are the outgrowth of the past fifty years of marvelous progress and attainments of our people before us, we are to study comprehensively and in detail the provisions of our present Constitution with a view to the necessity or advisability of changing or omitting any of its provisions which will improve it so as to secure for our people a form of government best suited to their needs and most conducive to their welfare.

If we shall find changes in the Constitution advisable, we are to determine the best means of effecting such changes, whether by amendment of particular sections or articles, or by a general revision of the entire Constitution.

The direction of the act is that we are to report to the next general assembly in detail such recommendations as to the continuance, discontinuance or modification of existing provisions or the adoption of new provisions as we from our investigations and study shall deem advisable and proper. It will be our duty to make drafts of any proposed amendments, or, if it is deemed advisable, we may draft a general revision of the entire Constitution.

Thus it will be seen that our mission is to examine the foundations of our state government to see whether they are sound and secure for the coming years of trial, and where, in our opinion, they can be strengthened, to put in new rocks of strength.

It seems to me that no call for higher public service can come to free men and women in a republic than this.

The task before us calls for exhaustive study, unremitting work, patient hearing of every view presented, tolerance of each others opinions, the wisest judgment and absolute fearlessness in arriving at the conclusions which we deem to be right.

If our task is well performed, we, and the agencies which shall follow after us, and the people in putting their final approval on what shall have its beginnings here today, will be doing not only Pennsylvania, but constitutional government everywhere, a forward-looking service.

APPOINTMENT OF SECRETARY.

Mr. PEPPER. Mr. Chairman: I move you, sir, that, with the consent of the Governor, William Draper Lewis, be appointed or employed as the Secretary of this Commission, and that his salary be fixed at five hundred dollars per month.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Commission agree to the motion?

The CHAIRMAN. Are there any other nominations for the office of Secretary? There being no others, and this being a question involving an expenditure for salary, the Clerk will call the roll.

The roll was called by the Clerk and was as follows:

YEAS—19.

Alter, Carson, Connelly, English, Fisher, Fox, Kelly, Miller, Munce, Pepper, Perrine, Pinchot, Reed, Stackpole, Sulzberger, Thorpe, Tyson, Warburton, Schaffer (Chairman).

NAYS—0.

The motion was agreed to.

OATH ADMINISTERED TO SECRETARY.

The CHAIRMAN. On the call of the roll the vote is unanimous, nineteen members voting in favor of the selection of Mr. Lewis as Secretary of the Commission.

Mr. Lewis will present himself at the bar and be sworn in by the Secretary of the Commonwealth.

The oath of office was administered by the Secretary of the Commonwealth to Mr. Lewis, as follows:

You, William Draper Lewis, elected as the Secretary of "The Commission on Constitutional Amendment and Revision" in and for the Commonwealth of Pennsylvania, do solemnly swear that you will support, obey and defend the Constitution of the United States and the Constitution of this commonwealth, and that you will discharge the duties of your office with fidelity; that you have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure your nomination or appointment, except for necessary and proper expenses expressly authorized by law; that you have not knowingly violated any election law of this commonwealth, or procured it to be done by others in your behalf; that you will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to your office, other than the compensation allowed by law. And so you do swear.

The oath was then signed by Mr. Lewis.

APPOINTMENT OF OFFICIAL STENOGRAPHERS.

Mr. PINCHOT. Mr. Chairman: I move you that, with the consent of the Governor, you, as Chairman, have authority to appoint two stenographers to report the proceedings of this Commission, and that the compensation of these stenographers be fixed at the usual rate of fifteen dollars per day.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The Chair announces that he appoints as official stenographers for the Commission Edward E. Jauss and William W. Wyant.

COMMITTEE ON ORGANIZATION AND RULES.

Mr. FISHER. Mr. Chairman: I move that the Chairman appoint a committee of three on Organization and Rules, one of whom shall be the Chairman.

Mr. CARSON. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The Chair appoints on said Committee on Organization and Rules, Messrs. Fisher and Fox. The Commission itself has named the Chairman, in the motion, as the third member of the committee.

APPOINTMENT OF COMMITTEES.

Mr. CARSON. Mr. Chairman: It is quite evident from the analytical statement that you have made of the duties devolving on this Commission that some method should be devised for the systematic and orderly study of the questions which will come before this body. There are eighteen articles in the Constitution, subdivided into many sections and clauses, and it is quite clear that those articles are capable of classification into correlated subjects. In order to avoid

the dangers of random suggestion and desultory discussion, it seems to me that the subject-matters ought to be referred to committees, properly constituted, for the careful study of the subject-matters referred to those committees; and, therefore, I move, sir, that the Chairman appoint five committees, to consist of five members each, of one of which committees the Chairman shall be a member, and to which shall be referred the various articles of the present Constitution for the purpose of study and report.

Mr. THORPE. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. In pursuance of the motion which has just been passed, the Chair announces the appointment of the following committees:

Committee No. 1,

Messrs. Palmer, Chairman.

Alter.

Fisher.

Tyson.

Schaffer.

The following articles of the Constitution are referred to this Committee:

Article I. Declaration of Rights.

Article II. The Legislature.

Article III. Legislation.

Article IV. The Executive.

Committee No. 2,

Messrs. Carson, Chairman.

Sulzberger.

Kelly.

Fox.

Gordon.

The following articles of the Constitution are referred to this Committee:

Article V. The Judiciary.

Article VI. Impeachment and Removal from Office.

Article VII. Oath of Office.

Committee No. 3,

Messrs. Thorpe, Chairman.

Sharpless.

Wilson.

Munce.

Mrs. Miller.

The following articles of the Constitution are referred to this Committee:

Article VIII. Suffrage and Elections.

Article XII. Public Officers.

Article XIII. New Counties.

Article XIV. County Officers.

Committee No. 4,

Messrs. Pepper, Chairman.

Pinchot.

Cuyler.

Reed.

Stackpole.

The following articles of the Constitution are referred to this Committee:

- Article IX. Taxation and Finance.
- Article XVI. Private Corporations.
- Article XVII. Railroads and Canals.

Committee No. 5,

Messrs Smith, Chairman.

Connelly.

English.

Perrine.

Mrs. Warburton.

The following articles of the Constitution are referred to this Committee:

- Article X. Education.
- Article XI. Militia.
- Article XV. Cities and City Charters.
- Article XVIII. Future Amendments.

PLACE OF MEETING.

Mrs. MILLER. Mr. Chairman: I move that this Commission shall hold its sessions in the Senate Chamber, Capitol Building, at Harrisburg.

Mr. STACKPOLE. Mr. Chairman: I second the motion.

The motion was agreed to.

RECESS.

The CHAIRMAN. Has any member of the Commission any matter that he wishes to offer to the Commission at this time? If not, the suggestion of the Chair would be that the Commission now recess, say, until 2 o'clock this afternoon. If it is the preference of the Commission, the committees can meet during the recess and begin their preliminary work. It is now eleven o'clock, and it might be that it would be a good thing for the committees to meet; and the Chair will indicate the committee rooms, if some member will make the motion that we take a recess until two o'clock so that the committees can meet and organize in the meantime. I may say that there are stenographers in attendance for each one of the committees that has been named.

Mr. FISHER. Mr. Chairman: I move that we take a recess until two o'clock.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 11 o'clock A. M., the Commission took a recess until 2 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2 o'clock P. M.

The Chairman, William I. Shafer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The roll was called by the Secretary and was as follows:

PRESENT—20.

Alter, Carson, Connelly, English, Fisher, Fox, Gordon, Kelly, Miller, Munce, Pepper, Perrine, Pinchot, Reed, Smith, Stackpole, Sulzberger, Thorpe, Warburton, Schaffer (Chairman).

ABSENT—5.

Cuyler, Palmer, Sharpless, Tyson, Wilson.

OATH ADMINISTERED TO MESSRS. GORDON AND SMITH.

The CHAIRMAN. As the Chair recalls, Judge Gordon and Mr. Edgar F. Smith were not here this morning when the oath was administered. These gentlemen are now present and if they will present themselves to the bar the Secretary of the Commonwealth will administer the oath to them.

The oath of office was then administered by the Secretary of the Commonwealth to Messrs. Gordon and Smith, as follows:

You, James Gay Gordon and Edgar F. Smith, appointed and commissioned by the Governor of the Commonwealth of Pennsylvania to be members of "The Commission on Constitutional Amendment and Revision" in and for the Commonwealth of Pennsylvania do solemnly swear that you will support, obey and defend the Constitution of the United States and the Constitution of this commonwealth, and that you will discharge the duties of your office with fidelity; that you have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure your nomination or appointment, except the necessary and proper expenses expressly authorized by law; that you have not knowingly violated any election law of this commonwealth, or procured it to be done by others in your behalf; that you will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to your office other than the compensation allowed by law. And so each of you do swear.

The above oaths were then signed by Messrs. Gordon and Smith.

APPOINTMENT OF ASSISTANT SECRETARIES AND PAGE.

Mr. FISHER. Mr. Chairman: The Committee on Organization and Rules makes report that the committee recommends the employment of the following officers at the salaries stipulated: Matthew H. Taggart, of Sunbury, to be Assistant Secretary at a salary of three hundred dollars a month, and Philip T. Meredith, of Harrisburg, to be Second Assistant Secretary at a salary of two hundred dollars a month, and Frederick M. Writer, of Harrisburg, to be page at a salary of three dollars a day.

The CHAIRMAN. You have heard the report of the Committee on Organization and Rules. What action shall be taken?

Mr. CARSON. Mr. Chairman: I move that the report of the committee be adopted.

Mr. REED. Mr. Chairman: I second the motion.

On the question.

Will the Commission agree to the motion?

The CHAIRMAN. As salaries are provided for in this motion, the Secretary will call the roll.

The roll was called by the Secretary and was as follows:

YEAS—20.

Alter, Carson, Connelly, English, Fisher, Fox, Gordon, Kelly, Miller, Munce, Pepper, Perrine, Pinchot, Reed, Smith, Stackpole, Sulzberger, Thorpe, Warburton, Schaffer (Chairman).

NAYS—0.

The motion was agreed to.

INFORMATION FOR PRESS

Mr. STACKPOLE. Mr. Chairman: We have with us today a group of men without portfolio or commission, but whom I conceive to be a very important section of this body. I refer now to the fourth estate. I believe that unless we have the proper sympathy of the press of the state, the proper interpretation of the deliberations of this body during the coming months, we cannot hope to have a real appreciation by the people of what we are undertaking to do. I simply want to suggest at this time that some method be adopted by the various groups of committees, perhaps in the appointment of a spokesman, through whom these gentlemen of the press may be able to get proper and prompt information.

I therefore move, Mr. Chairman, if it is in order, that after further consideration of the matter, the several committees select of their number spokesmen who will meet the gentlemen of the press from time to time and give to them such information as is proper after the different sessions. What may be done by the Commission as a whole ought to be considered at the same time. But it seems to me extremely important that the people of the state be advised daily during these sessions of what is transpiring. Otherwise we are almost certain to have—I ought not to suggest it, perhaps—but we are almost certain to have suspicion, and all that sort of thing, if there is any suggestion of suppression of what is going on here, and of what will be going on during the next few months. I therefore make such a motion.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

SITTINGS AND ADJOURNMENTS.

The CHAIRMAN. Has any other member of the Commission anything to offer? It not, the Chair has a suggestion that he, with becoming modesty, would like to put before the Commission at this time. It seems to me that it is important that the Commission, sitting as a committee of the whole, shall, as speedily as possible, get down to work and accomplishment. Therefore, the suggestion that I have to make is that each committee, as soon as it is prepared to report on any article or sections of the Constitution which, in the opinion of the committee, ought not be changed but should remain as they are, that those reports be made at the earliest possible date, because then they can come before the entire Commission, sitting as a committee of the whole, and be disposed of either by agreeing with the report of the committee, or, if there is a disagreement with the committee, that can be threshed out in the open sessions of the Commission. If this is not done, it occurs to me that we will be tied up on committee reports until the last committee has threshed out the last difficult proposition there is before it.

This is merely by way of suggestion to the various committees, and it seems to me that if this is done there will be sufficient reportable material by Thursday morning, to enable the Commission to begin deliberations in Committee of the Whole.

Now, it has been suggested by some members of the Commission that they would like to know what the plans of the Commission are as to meetings, particularly with reference to a meeting next week, and, also with reference to whether the Commission intends to meet during the Holidays, or adjourn over the Holidays. It is important

for some busy men that are here on this Commission to know just what engagements they can make, and I would like to know what the feeling of the Commission is about that. It has been suggested that we meet three days next week, Tuesday, Wednesday and Thursday, in order to clean up, as far as we can, the work of the committees; if that is in consonance with the view of the Commission, will some member of the Commission make a motion to that effect, then that could be determined; and also the Commission can consider and determine, it seems to me, at this time, whether the Commission would then adjourn, say, until Tuesday, the 6th of January; that is, we would adjourn the Commission after next week over the Holidays, and would let everyone here know what their engagements were, as far as this Commission is concerned, until that time. I am ready to receive any suggestions.

Mr. ALTER. Mr. Chairman: I move that when the Commission adjourns on Thursday of this week, it be to meet again on Tuesday morning of next week, with the expectation of remaining in session Tuesday, Wednesday and Thursday of next week, and then adjourning until the 6th of January.

Mr. KELLY. Mr. Chairman: I second the motion.

On the question,

Will the Commission agree to the motion?

Mr. REED. Mr. Chairman: It almost breaks my heart to disagree with my fellow-delegate from Allegheny. But I do not see what we can accomplish by meeting next week for three days. Do you expect these committees to report the sections which they, so to speak, throw into the discard and are not going to change? When that is done, so far as our committee is concerned, the work has just begun, and I do not see what we will have to report next week, except to make a report of progress. Would we not make more progress by adjourning until January and allowing the committees to work in the meantime?

The CHAIRMAN. The committee of which the Chair is a member is ready to report, so there will be a calendar ready to be made up on the 6th of January, a calendar that could be made up for discussion by the Commission, sitting as a committee of the whole. My thought is that if we can get along as rapidly as possible, of course, without trespassing on anybody's time, we can accomplish the result we want to accomplish in the best way. Does any other member of the Commission desire to be heard?

Mr. FOX. Mr. Chairman: I am somewhat in accord with the suggestion made by Judge Reed; but, as you have suggested, perhaps the Commission, as a whole, will have something to discuss next week. I would suggest that we meet Wednesday and Thursday, rather than Tuesday, Wednesday and Thursday. I think that would relieve the busy men to a certain degree, and I would offer that as an amendment to Mr. Alter's motion.

Mr. GORDON. Mr. Chairman: I second the amendment.

Mr. ALTER. Mr. Chairman: I shall be glad to accept the amendment if the gentlemen who seconded the motion will agree.

Mr. KELLY. Mr. Chairman: I accept the amendment also.

On the question,

Will the Commission agree to the motion as amended?

It was agreed to.

The CHAIRMAN. Has any member anything to suggest to come before the Commission at this time?

QUESTION OF PROCEDURE.

Mr. PEPPER. Mr. Chairman: I should like to have light on this question of procedure. It has come to the knowledge of Committee No. 4, dealing with taxation, finance, and so forth, that Committee No. 5, to which has been referred, among other things, the subject of city charters and municipal activities, will find it necessary, in the orderly conduct of its business, to take into consideration the debt-incurring power of municipalities, which falls within the scope of the allotment of Committee No. 4. The question is whether there is any reason why one committee should not, at the request of another, cede to the requesting committee for investigation such portions of the assignment as seem to be germane to the work of both, with the understanding that when such temporary assignment is made and the investigation has been completed, the committee to which the cession has been made will refer it back again for the final action of the committee to which it was originally allotted. It seems to both of these committees that this is the proper course to pursue, but we are reluctant to do anything that would disturb the allotment made to us unless in accordance with the wish of the Chair and the general arrangement of our business.

The CHAIRMAN. To the Chair it seems, that would be an entirely proper thing to do. My suggestion would be, that in order to keep the records straight the suggestion should go through the Secretary, so the Secretary would know where matters were that are lodged with the various committees. I think that is entirely proper; or, if the committees desire to meet jointly on related subjects they can do so. Has any other member any suggestion to offer to the Commission?

Mr. FOX. Mr. Chairman: The announcement made a few moments ago contained the suggestion that those articles which require no change be immediately reported to the Commission. I would like to ask whether it would not be well also to include those articles in which there is only a slight verbal change. I have in mind one article in which there will be only a slight change.

The CHAIRMAN. I think the suggestion very proper and I believe it would be well for each committee, when it has determined how any article referred to it should be changed, to report the article as changed. My thought is that by the time the Committee of the Whole shall have disposed of its sections which have been reported without change, the several committees will be ready to report for consideration articles which should, in their judgment, be amended. Has any other member anything further to suggest? If not, I think it will be in order to adjourn the Commission, say until 10 o'clock tomorrow morning, in order that committees may resume their work.

ADJOURNMENT.

Mr. CONNELLY. Mr. Chairman: I move that the Commission adjourn until tomorrow morning at 10 o'clock.

Mr. PERRINE. Mr. Chairman: I second the motion.
The motion was agreed to.

Whereupon, at 2.40 o'clock P. M., the Commission adjourned until 10 o'clock tomorrow morning.

Senate Chamber,
Wednesday, December 10, 1919.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—19.

Alter, Carson, Connelly, Cuyler, English, Fox, Gordon, Kelly, Miller, Munce, Pepper, Perrine, Pinchot, Reed, Smith, Stackpole, Thorpe, Tyson, Schaffer (Chairman).

ABSENT—6.

Fisher, Palmer, Sharpless, Sulzberger, Warburton, Wilson.

OATH ADMINISTERED TO MR. CUYLER.

The CHAIRMAN. Mr. Cuyler, who was not present yesterday, is present today and will present himself at the bar and the Secretary of the Commonwealth will administer the oath.

The Secretary of the Commonwealth, Hon. Cyrus E. Woods, then administered the oath of office to Thomas DeWitt Cuyler, as follows:

You, Thomas DeWitt Cuyler, appointed and commissioned by the Governor of the Commonwealth of Pennsylvania to be a member of "The Commission on Constitutional Amendment and Revision" in and for the Commonwealth of Pennsylvania, do solemnly swear that you will support, obey and defend the Constitution of the United States and the Constitution of this commonwealth, and that you will discharge the duties of your office with fidelity; that you have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure your nomination or appointment, except for necessary and proper expenses expressly authorized by law; that you have not knowingly violated any election law of this commonwealth, or procured it to be done by others in your behalf; that you will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to your office, other than the compensation allowed by law. And so you do swear.

The oath was then signed by Mr. Cuyler.

REPORTS FROM COMMITTEES.

The CHAIRMAN. The first business in order will be reports of committees. Has Committee No. 1 any report to make?

Mr. ALTER. Mr. Chairman: As acting chairman of that committee I would state that we have a report as to the preamble and the first two articles, as follows:

We are of opinion that no change should be made in the preamble of the Constitution or in article I thereof, the Declaration of Rights.

We are of opinion that the following sections of article II should not be changed and should remain as at present: Sections 1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

We are of opinion that section 4 of article II should be amended by striking out all of the words after the word "Governor" so that the section will read:

"Section 4. The general assembly shall meet at twelve o'clock noon on the first Tuesday of January every second year, and at other times when convened by the Governor."

This being changed only in the striking out of the latter part of the section, which does not seem to be applicable to conditions which have arisen since the Constitution was adopted.

Section 6 we suggest be amended so as to read as follows:

"Section 6. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office or any place of profit under this commonwealth which shall have been created or the emoluments thereof increased during such time; and no member of Congress or other person holding any civil office (except of attorney-at-law) under the United States, or this commonwealth, shall be a member of either House during his continuance in office."

This is as far, Mr. Chairman, as we are prepared to report at this time.

For Report No. 1 see Appendix.

The CHAIRMAN. Has Committee No. 2 any report to make?

Mr. CARSON. Mr. Chairman: The Committee simply reports progress and asks to be continued.

The CHAIRMAN. The committee will be continued. Has Committee No. 3 any report to make?

Mr. THORPE. Mr. Chairman: A tentative report. On article VIII, the first section, qualifications of electors, the committee suggests that we strike out the word "male" after the word "Every" in line 1, and phrase that expression so that it will provide some sort of a test of qualification of electors in addition to the test already found in the instrument as submitted to the committee and to insert the words in the fourth line, "and other qualifications." The position of the phrase, Mr. Chairman, might be better placed in the second line after the word "qualifications" to refer to any such educational qualification as the general assembly may see fit to add, a suggestion that is made by a member of the Commission.

Section 2, no change.

Section 3 is also referred to the committee on judiciary, as it involves matter of interest to that committee.

Sections 4, 5 and 6, no change.

Section 7, referred to the committee on municipal government.

Section 8, no change.

Section 9, as now printed, except the elimination of the last few words.

On page 49, section 9, the closing expression is "absolutely for a term of four years." It is suggested that those words be omitted, making the penalty for violation of the election law the elimination of the right to exercise suffrage.

Section 10, no change.

Section 11, also referred to the committee on judiciary.

Sections 12, 13 and 14, no change.

Section 15, referred to the committee on municipal government.

Section 16, referred to the committee on judiciary also.

Section 17, no change.

For Report No. 2 see Appendix.

The CHAIRMAN. Will there be a further report from your committee?

Mr. THORPE. Mr. Chairman: There will be a further report, and the committee begs to be continued.

The CHAIRMAN. Then the committee will be continued. Has Committee No. 4 any report to make?

Mr. PEPPER. Mr. Chairman: We have a brief formal report here, which I will file with your permission.

Among other things that the report contains are the following:

The committee proceeded with a preliminary study of the articles referred to it, with the following result:

First. Sections 7 to 10, inclusive, and section 15 of article IX were, at the request of Committee No. 5, referred to that body for investigation and study; it being understood that the conclusions reached will be referred back to Committee No. 4 for such action as may by it be deemed proper.

Second. Sections 3, 5, 11, 12 and 13 of article IX are reported to the Commission with the following statement: That, at present, the committee perceives no reason why any of these sections should be amended, but reserves the right to reconsider this conclusion in the light of further study.

Third. The remaining sections of article IX and all sections of articles XVI and XVII are under consideration by the committee, and will be made the subject of future report.

We, therefore, report progress, and ask leave to sit again.

The CHAIRMAN. Leave is granted. The committee will continue its sessions.

For Report No. 3 see Appendix.

The CHAIRMAN. Has Committee No. 5 any report to make?

Mr. SMITH. Mr. Chairman: We beg leave to report progress, and ask to be continued.

The CHAIRMAN. The report will be received and the committee will continue its deliberations.

ACTION ON COMMITTEE REPORTS.

The CHAIRMAN. What action will the Commission take upon the reports of committees that have been received? What action will the Commission take upon the report of Committee No. 1?

Mr. REED. I do not suppose that there will be any decisive action this morning on any of these committee reports. What I suggest, and will put in the form of a motion, is that you put some of them on the calendar to be considered as the final reports of committees come in.

Mr. GORDON. Mr. Chairman: I second the motion.

On the question,

Will the Commission agree to the motion?

The CHAIRMAN. The motion is that the Secretary be instructed to place the report of Committee No. 1 upon a calendar for future consideration by the Commission, as I construe it.

Mr. REED. Mr. Chairman: And that the reports of other committees that have reported or shall report shall take a like course.

The motion was agreed to.

The CHAIRMAN. The Chair would suggest that in making up his calendar the Secretary furnish a copy of the calendar, including the reports of the committees, to each member of the Commission, so that each member may be informed as to what the reports are.

Has any other member of the Commission anything to suggest at this time?

Mr. FOX. Mr. Chairman: The committee on suffrage and elections reports that the word "male" should be stricken out of the first section. I suggest that, perhaps, in the following three or four paragraphs the word "he" ought to be changed.

Mr. THORPE. Mr. Chairman: That question arose as to whether in the organic law the word "he" would cover both sexes. It is a neutral phrase, and we hesitated, Mr. Chairman, to make the change. That was mentioned in committee, we would be very much obliged if any of our associates would express an opinion on that subject.

The CHAIRMAN. I suppose that will go over until the report of the committee comes up to be acted upon by the Commission.

Has any other member of the Commission anything to suggest at this time? If not, I suppose it would be in order for the Commission to now recess until a time that is convenient to the members, so that the various committees may resume the consideration of the subjects committed to them.

Mr. PEPPER. Mr. Chairman: I suppose it will be sufficiently clear to everybody that these reports which specify certain sections as not requiring amendment, in the judgment of the committee reporting, are in every sense tentative. I mean by that, that it seems wise to guard against the possibility of any one supposing that final judgment on these important matters has been rendered after such brief consideration as we have been able to give to them.

The CHAIRMAN. I should think that matters covered by the reports of the committees were still in their custody to such an extent that they might be withdrawn from the Commission at any time and a subsequent report thereon made if desired.

Mr. PEPPER. Mr. Chairman: Speaking for my own committee, this type of question has presented itself: Assuming, for example, that a certain existing system is to be retained in its entirety, it would follow that such and such a section of an article dealing with that system is proper and should not be amended. On the other hand, it is conceivable that the Commission, at some stage of its deliberation, might make a radical change in the system, in which case the section now reported as requiring no amendment might be eliminated altogether or itself radically changed. So that we want to make it perfectly clear, on behalf of Committee No. 4, that we have not reached any conclusion that we deem worthy of very great weight or as expressing anything more than the most tentative conclusion.

The CHAIRMAN. The Chair's thought is that when such a situation shall arise, either by the action of the Commission itself or by request of the committee, the matter should be re-referred to the committee for consideration. What seems to me important is that there shall be a calendar made up as soon as possible consisting of matters which have been formulated and which can be considered by the Commission sitting as a committee of the whole.

PRESS REPRESENTATIVES.

The Chairman presented a communication which was read by the Secretary, as follows:

Harrisburg, Pa., December 9, 1919.

Hon. William I. Schaffer,
Chairman, Constitutional Revision Commission,
Harrisburg, Pennsylvania.

Sir:—

I have the honor to inform you that the following have been regularly assigned to report the proceedings of the Constitutional Revision Commission:

Walter J. Christy, *The Gazette-Times*, Pittsburgh;
L. R. Goshorn, *The Dispatch*, Pittsburgh;
John R. Ball, *The Post and The Sun*, Pittsburgh;
Joseph N. Mackrell, *The Chronicle-Telegraph*, Pittsburgh;
Odell Hauser, *The Press*, Philadelphia;
Charles Gilbert Reinhardt, *The Evening Bulletin*, Philadelphia;
George E. King, *The Evening Public Ledger*, Philadelphia;
Hiram G. Andrews, *The North American*, Philadelphia;
Charles G. Miller, *the Public Ledger*, Philadelphia;
William R. Douglas, *Tri-State News Bureau*, Pittsburgh;
J. Harold Keen, *International News Service*;
Lee R. Richardson, *United Press*;
Emerson Hassrick, *Harrisburg Patriot*, Harrisburg;
A. Boyd Hamilton, *The Associated Press and Harrisburg Telegraph*.

Respectfully,

A. BOYD HAMILTON,
Secretary, Legislative Correspondence.

RECESS.

The CHAIRMAN. Has any other member of the Commission anything to suggest? If not, a motion will be entertained by the Chair to recess until such time as is convenient to the Commission.

Mr. ALTER. Mr. Chairman: I move that the Commission take a recess until 2 o'clock this afternoon.

Mr. CARSON. Mr. Chairman: I second the motion.
The motion was agreed to.

Whereupon, at 10.30 o'clock A. M., the Commission took a recess until 2 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour for the reconvening of the Commission having arrived, the Commission will be in order.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports from committees at this time? The Chair happens to know that there is no report from Committee No. 1. Has Committee No. 2 anything to report?

Mr. CARSON. Mr. Chairman: The committee to which was referred consideration of articles V, VI and VII of the present Constitution of Pennsylvania respectively reports, tentatively, as follows:

That article VI, relating to impeachment and removal from office, shall, in sections 1, 2 and 3, stand without change. Section 4 to be amended by striking out of the third line the words "shall be removed" and by adding in the fourth line after the words "infamous crime" the words "in addition to the penalties provided by law the court shall order the removal of such officers from office." So that the section, as amended, shall read as follows:

"All officers shall hold their offices on the condition that they behave themselves well while in office, and on conviction of misbehavior

in office or of any infamous crime, in addition to the penalties provided by law the court shall order the removal of such officers from office."

These words are added for the purpose of clearing up doubt as to where the power of removal existed under the present Constitution. The remainder of the section to stand as at present.

Article VII, relating to the oath of office, as to the first clause in section 1, shall stand unchanged. The second clause to be amended in the third line after the words "the supreme court" by the insertion of the words "and of the superior court." So that the clause shall read as follows:

"The foregoing oath shall be administered by some person authorized to administer oaths, and in the case of state officers and justices of the supreme court and of the judges of the superior court, shall be filed in the office of the Secretary of the Commonwealth."

In all other respects the clause to stand unchanged.

The committee reserves to itself the right either to withdraw or to further amend these suggestions.

For Report No. 4 see Appendix.

The CHAIRMAN. You have heard the report of the committee. If there is no objection, the report will take the same course the Commission has already prescribed for other reports of committees.

Has Committee No. 3 any report to make at this time?

Mr. THORPE. Mr. Chairman: Committee No. 3 has no further report.

The CHAIRMAN. Has Committee No. 4 any report to make at this time?

Mr. REED. Mr. Chairman: In the absence of the chairman, I can only report progress and discussion.

The CHAIRMAN. Has Committee No. 5 anything to report at this time?

Mr. SMITH. Mr. Chairman: Committee No. 5 begs leave to submit its report.

For Report No. 5 see Appendix.

The CHAIRMAN. Unless there is an objection, the report of Committee No. 5 will take the course prescribed by the action of this Commission this morning for the reports of committees.

Has any member of the Commission anything further to offer at this time?

TIME OF MEETING.

The CHAIRMAN. There were some suggestions made to the Chair by Mr. Pepper, who is not here just now, as to the time of the meeting of the Commission on the first day that it meets next week, and if the Commission has any wish or desire in that respect, of course, it is a matter of the pleasure of the Commission. The hour fixed for the meeting is ten o'clock. The purpose of the suggestion was that it might be advisable to fix the meeting of the Commission for the first day it meets in any week at a later hour which would enable the members to get here by taking the morning train. That would be an advantage, possibly, to the members from Philadelphia, but might be a disadvantage to the members that come from other parts of the state who would possibly have to leave the afternoon or evening before and would have to remain around until afternoon without anything to do.

There being no suggestion the Chair takes it for granted that the Commission has no other desire than that the hour of meeting shall remain as fixed, at ten o'clock for next Wednesday morning.

If there is nothing further to come before the Commission at this time, the Chair would suggest that it might be in order to recess. My suggestion would be that we recess until a late hour in the afternoon, as it may be that important matters should come before the Commission before we adjourn for the day. The committees can go on with their deliberations, and we can assemble here after they have concluded their meeting at the hour now named, if this should be satisfactory to the Commission. If not, we can now adjourn until tomorrow morning.

RECESS.

Mr. FOX. Mr. Chairman: I move that the Commission now take a recess until 5 o'clock this afternoon.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 2.35 o'clock P. M., the Commission took a recess until 5 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 5 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Commission having arrived, the Commission will be in order.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports of committees ready? Is Committee No. 1 ready to make any report?

Mr. ALTER. Mr. Chairman: Committee No. 1 will be ready to report at the morning session.

The CHAIRMAN. Has Committee No. 2 any report to make?

Mr. CARSON. Mr. Chairman: We report progress and ask to be continued.

The CHAIRMAN. The committee will be continued. Has Committee No. 3 any report to make?

Mr. THORPE. Mr. Chairman: Our report will be made in the morning.

The CHAIRMAN. Has Committee No. 4 any report to make?

Mr. PEPPER. Mr. Chairman: Committee No. 4 has been in session and is proceeding with the work assigned to it, reports progress, and asks leave to be continued.

The CHAIRMAN. Has Committee No. 5 any report to make?

Mr. SMITH. Mr. Chairman: Committee No. 5 reports progress and requests to be continued.

The CHAIRMAN. Has any member of the Commission anything to offer at this time?

SPECIAL ORDER ON REPORT NO. 1.

Mr. ALTER. Mr. Chairman: Committee No. 1 reported this morning as to articles I and II. We have completed our tentative consideration of articles III and IV and will present our report to-

morrow morning. This completes the work of Committee No. 1 for the present. In order that we may possibly get to a point where there may be some general interchange of views in the Commission, I would move that at the afternoon session of next Wednesday the report of Committee No. 1 be taken up for such action, by way of tentative approval, or disapproval, or postponement of consideration as the Commission may find expedient; and in that connection let me state that the full report of the committee will be either printed or typewritten and come to all members of the Commission during the recess, so that prior to their coming here next Wednesday they will have the entire report of this committee before them.

Mr. TYSON. Mr. Chairman. I second the motion.

On the question,

Will the Commission agree to the motion?

Mr. FOX. Mr. Chairman: I would like to ask whether that contemplates final action by the Commission on that particular article or the articles reported on?

The CHAIRMAN. It seems to the Chair that that would be a question for the pleasure of and disposition by the Commission when the report comes to be considered as to what action the Commission will then take.

Mr. ALTER. Mr. Chairman: What I had in mind and what I stated, I think, in the motion, was that the report should be taken up for such action by way of tentative approval or disapproval, or postponed, as the Commission might find expedient; just so we get in position to bring about some interchange of views by members of the Commission, other than those serving on this committee, concerning the suggested changes.

On the question recurring,

Will the Commission agree to the motion?

It was agreed to.

The CHAIRMAN. It is understood, then, that on next Wednesday afternoon the order of business will be the consideration of the report of Committee No. 1.

Has any other member of the Commission anything to suggest?

CHART OF STATE GOVERNMENT.

Mr. PEPPER. Mr. Chairman: In the course of the deliberations of Committee No. 4, it has developed that our work will be considerably facilitated if we could have before us, in some graphic form, a statement of the organization and relationship of the different departments of the state government, bureaus and commissions, and other bodies functioning under the state. I am led to believe that the same desire is entertained by the members of some of the other committees, and I rise to suggest, sir, that it would be well, if the Chair approves, that the Secretary should be requested to prepare or cause to be prepared a graphic chart of the government of the state, its different departments, their relationships, and the different commissions and bodies functioning as part of the state government, or responsible thereto, so that the chart itself could be displayed in the presence of the Commission during its sessions, and small reproductions of it made available for the use of the members of the Commission. I have in hand such a chart, which was prepared

for the use of the Constitutional Convention of New York, and as now set forth in the published volume of the Report of the Committee on Reconstruction in New York. It enables you to get at a glance much matter of organization which otherwise you would have to spend a great deal of time in acquiring.

If it is in order, I should like to move, sir, that the Secretary be requested to take an order for the preparation of such a chart and make it available in suitable form for the use of members of the Commission.

Mr. PINCHOT. Mr. Chairman: In rising to second the motion, I want to say that such a chart is already in existence, having been prepared by the Economy and Efficiency Commission under the state administration, and I believe the Secretary will have no trouble in securing a reprint.

The motion was agreed to.

The CHAIRMAN. Is there any other suggestion from any member of the Commission at this time?

TIME OF MEETING.

Mr. PEPPER. Mr. Chairman: Has the time been fixed for our meeting next Wednesday, or is that a matter suitable for consideration just now? There are a great many of us who would find it convenient to take the early train from Philadelphia on Wednesday morning, which would bring us here in season for a session which began at twelve o'clock noon, and thus relieve us of the necessity of coming up the night before. On the other hand, if postponement until noon will inconvenience other members of the Commission, we should not ask for the change. I would like to inquire informally whether such suggestion as that would be agreeable to the Commission.

The CHAIRMAN. When we met after the noon recess today, you were not in the room, but I called the attention of the Commission to the suggestion you have just made, and the Commission took no action. I, therefore, took it that the Commission would meet next Wednesday morning at ten o'clock, the hour heretofore fixed for the meeting. It is a matter entirely for the pleasure of the Commission, and the order will be made according to their desire.

Mr. PEPPER. Mr. Chairman: In order to ascertain the sense of the Commission, I will make a motion, which I shall immediately withdraw if there is any dissent, that the Commission assemble on Wednesday next at twelve o'clock noon instead of at ten o'clock A. M.

Mr. KELLY. Mr. Chairman: I second the motion.

On the question,

Will the Commission agree to the motion?

The CHAIRMAN. I do not know how that fits in with the western Pennsylvania members, whether they have to come on the night before or not, and sit around until noon.

Mr. CARSON. Mr. Chairman. I think it is a matter on which the members, other than those from the Philadelphia section, ought to express themselves with entire frankness. I know that Mr. Pepper and myself and the Philadelphia members, in minority of the Commission, do not wish to inconvenience the larger body. If it does not work a practical inconvenience, then we graciously accept the cour-

tesy; otherwise, we prefer not to disturb the order of procedure for our own personal convenience. That is what I understood Mr. Pepper to mean.

The CHAIRMAN. That is what I understood. Might I inquire of Mr. Alter how that works out practically for you members from western Pennsylvania that have a long ride?

Mr. ALTER. Mr. Chairman: We have to get in here the night before or at seven o'clock in the morning, which necessitates our coming here during the night. Either way we have to leave the day before. I have just been conferring with my colleague, Mr. Munce, who comes by the way of Pittsburgh, and our thought is that as we have to come the evening before, no matter which hour is fixed, and by fixing the hour at noon the gentlemen from Philadelphia can remain at home until the morning, we have not the slightest objection to affording them that additional convenience. It would be no hardship for us to be here during Wednesday forenoon. There is always some way of putting in the time at the capitol. We have not the slightest objection, but are glad to afford the gentlemen that additional comfort.

On the question recurring,

Will the Commission agree to the motion?

It was agreed to.

The CHAIRMAN. It is understood then, that when the Commission adjourns this week, it will be to meet at twelve o'clock noon on Wednesday next, and the Secretary will notify the absent members to that effect.

Mr. THORPE. Mr. Chairman: Those of us who might be here could meet at ten o'clock or before; we would be very happy, as Mr. Alter says, to agree with the suggestion of Mr. Carson and Mr. Pepper.

The CHAIRMAN. I think it would be entirely proper and agreeable to the members who are here.

Is there any other suggestion that any member has to bring before the Commission at this time? If not, a motion to adjourn is in order.

ADJOURNMENT.

Mr. STACKPOLE. Mr. Chairman: I move that the Commission adjourn until tomorrow morning at 10 o'clock.

Mr. CONNELLY. Mr. Chairman. I second the motion.

The motion was agreed to.

Whereupon, at 5.25 o'clock P. M., the Commission adjourned until 10 o'clock tomorrow morning.

Senate Chamber,

Thursday, December 11, 1919.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—14.

Alter, Carson, Connelly, English, Fisher, Fox, Gordon, Kelly, Miller, Pinchot, Stackpole, Sulzberger, Thorpe, Schaffer (Chairman).

ABSENT—11.

Cuyler, Muncie, Palmer, Pepper, Perrine, Reed, Sharpless, Smith, Tyson, Warburton, Wilson.

REPORTS FROM COMMITTEES.

The CHAIRMAN. A quorum of the Commission being present, the Commission will proceed with its business. The first thing in order is the reports of committees. Has Committee No. 1 anything to report?

Mr. ALTER. Mr. Chairman: Committee No. 1 has its report on articles III and IV.

Section 1 of article III it believes should stand without amendment.

Section 2 we recommend to be amended so as to read as follows:

"Section 2. No bill shall be considered unless referred to a committee, returned therefrom, and printed for the use of the members. Every bill before final passage shall be punctuated with such punctuation as it is intended to contain."

The last sentence being the addition suggested by the committee.

Section 3 to stand without amendment.

Section 4 to be amended so as to read as follows:

"Every bill shall be read"—instead of "read at length"—"on three different days in each House;" and so on, as it is now expressed.

Section 5 to stand without amendment.

Section 6 to be amended by adding this sentence:

"Every law creating any general system may be given a short title or designation, and any bill amending or reviving the same may recite only such short title or designation and the date of the approval of said law."

Section 7, clauses 1 to 20, both inclusive, to stand without amendment.

Clause 21 to be amended so as to read as follows:

"Affecting the estates of minors or persons under disability."

Clauses 22 to 28, both inclusive, to stand without amendment.

Sections 8, 9, 10 and 11 to stand without amendment.

Section 12 to be amended so as to read as follows:

"Section 12. The printing and binding of the laws, journals, bills, documents and papers of the general assembly, and the printing and binding required for the other departments, shall be let on contract or done directly by the state in such manner as shall be prescribed by law. All furnishings and fuel for the capitol buildings and all paper and stationery required for the legislative and other departments, shall be procured under contract. All contracts comprehended by this section shall be awarded to the lowest responsible bidder under such regulations as shall be prescribed by law, and shall be subject to the approval of the Auditor General and State Treasurer; no member or officer or any department of the government shall be in any way interested in such contracts."

Sections 13 and 14 to stand without amendment.

Section 15 to be amended so as to read as follows:

"Section 15. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the commonwealth, interest on the public debt and for the public schools, appropriations to penal, charitable and educational institutions may be made in one or more bills as the legislature shall determine. All other appropriations shall be made by separate bills, each embracing but one subject."

Sections 16 and 17 to stand without amendment.

Section 18 to be amended so as to read as follows:

"Section 18. No appropriations shall be made for charitable, educational or benevolent purposes to any person or community, nor to any institution, corporation or association in which there is denominational or sectarian instruction given, or which is not open for the admission of any persons without distinction as to denomination or sectarian beliefs. This section shall not prohibit appropriations for pensions or gratuities for military services, for the retirement of judges and employes of the state, or state institutions or for the retirement of employes of the public school system."

Section 19 to stand without amendment.

Section 20 to be amended so as to read as follows:

"Section 20. The general assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever; but the foregoing provisions of this section shall not prohibit the passage of laws authorizing municipalities as a class to create commissions to act in an advisory capacity, or the passage of laws creating commissions with general jurisdiction over all municipalities."

Section 21 to stand without amendment.

Section 22 to be eliminated entirely and subsequent sections renumbered accordingly.

Sections 23 and 24 to stand without amendment.

Section 25 to be amended so as to read as follows:

"Section 25. When the general assembly shall be convened in special session the legislation at such special session shall be limited to the subjects designed either in the proclamation of the Governor calling such session, or in communications made by the Governor thereto."

Section 26 to stand without amendment.

Section 27 to be eliminated entirely and subsequent sections renumbered accordingly.

Sections 28, 29, 30, 31, 32 and 33 to stand without amendment, except as to the renumbering required by the striking out of sections 22 and 27.

Article III should be further amended by adding thereto the following as the last section and numbered according to the foregoing eliminations:

"Section 32. The legislature shall have power to classify counties, cities, boroughs, school districts and townships according to population, and all laws passed relating to such classes shall be deemed general legislation within the meaning of this Constitution, but counties, cities and school districts shall not be divided into more than seven classes, and boroughs and townships into more than five classes."

Article IV, section 1, to be amended so as to read as follows:

"Section 1. The executive department of this commonwealth shall consist of a Governor, Lieutenant Governor, Secretary of the Commonwealth, Attorney General, Auditor General, State Treasurer, Secretary of Internal Affairs, Superintendent of Public Instruction, and the heads of such state departments as may exist from time to time by legislative enactment."

Section 2 to stand without amendment.

Section 3 to be amended so as to read as follows:

"Section 3. The Governor shall hold his office during four years from the third Tuesday of January next ensuing his election."

Sections 4, 5, 6 and 7 to stand without amendment.

Section 8 to be amended so as to read as follows:

"Section 8. The Governor shall nominate and, by and with the advice and consent of a majority of all the members of the Senate, appoint a Secretary of the Commonwealth and an Attorney General during pleasure, a Superintendent of Public Instruction for four years, and such other officers of the commonwealth as he is or may be authorized by the Constitution or by law to appoint.

"In offices to which he may appoint, the Governor shall have power to fill all vacancies that may occur during the recess of the Senate or within ten days before final adjournment, by granting commissions which shall expire at the end of their next session, but before final adjournment of such session he shall nominate some one for the full or unexpired term as the case may require; failure of the Governor to so nominate shall be equivalent to a rejection of any person commissioned during such session or the recess following the final adjournment of the same. He shall have power to fill any vacancy that may occur during the recess of the Senate or within ten days before final adjournment in the office of the Auditor General, State Treasurer, Secretary of Internal Affairs, in a judicial office, or in any other elective office which he is or may be authorized to fill.

"If a vacancy occurs during a session of the Senate in an appointive or elective office, except within ten days before final adjournment, the Governor shall not appoint, as in the case of a recess vacancy, but shall nominate to the Senate before final adjournment a proper person to fill said vacancy; failure of the Governor to so nominate shall be equivalent to a rejection of any person commissioned during such session or the recess following the final adjournment thereof. In the case of a recess or session vacancy in an elective office, a person shall be chosen to said office on the next election day appropriate to such office according to the provisions of this Constitution, unless the vacancy shall occur within two calendar months immediately preceding such election day, in which case the election for said office shall be held on the second succeeding election day appropriate to such office.

"No person nominated for an office of trust or profit under the government of this state, who fails to receive confirmation before recess, shall be eligible to appointment to such office during such recess. In acting on executive nominations, the Senate shall sit with open doors, and in confirming or rejecting nominations of the Governor the vote shall be taken by yeas and nays, and shall be entered on the journal."

Sections 9, 10, 11, 12 and 13 to stand without amendment.

Section 14 to be amended so as to read as follows:

"Section 14. In case of a vacancy in the office of Lieutenant Governor, or when the Lieutenant Governor shall be impeached by the House of Representatives, or shall be unable to exercise the duties of his office, the powers duties and emoluments thereof for the remainder of the term, or until the disability be removed, shall devolve upon the president pro tempore of the Senate; and the president pro tempore of the Senate shall in like manner become Governor if a vacancy or disability shall occur in the office of Governor; his seat as senator shall become vacant whenever he shall become Governor, and shall be filled by election as any other vacancy in the Senate; and the Secretary of the Commonwealth, or in case of a vacancy in that office then the Attorney General shall, in like manner, become Governor if a vacancy or disability shall occur in the office of the Governor during a vacancy in both the office of Lieutenant Governor and the office of president pro tempore of the Senate."

Section 15 to stand without amendment.

Section 16 to be amended so as to read as follows:

"Section 16. The Governor shall have power to disapprove of or reduce any item or items of any bill, making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto."

Sections 17, 18, 19, 20, 21 and 22 to stand without amendment.

For Report No. 6 see Appendix.

The CHAIRMAN. You have heard the report of Committee No. 1, and under the motion that has already been passed by the Commission it will take its course and be placed on the calendar by the Secretary. I may say that the copies of the full report of Committee No. 1 will be forwarded to the members of the Commission at their

homes so that there will be an opportunity to give full consideration to the report before the meeting on next Wednesday.

Has Committee No. 2 anything to report?

Mr. CARSON. Mr. Chairman: Not at present. We are still engaged in the consideration of article V.

The CHAIRMAN. The committee will be continued.

Has Committee No. 3 any report to make?

Mr. THORPE. Mr. Chairman: We have a tentative report that we beg to submit.

Article XIII, section 1, no change.

Article XIV, sections 1 and 2, referred to Committees Nos. 2 and 5.

Permit me to say that the interlocking or interlacing clauses are such that we find ourselves somewhat dependent upon the judgment of other committees.

Sections 3, 4 and 5, no change.

Section 7, changed to read as follows:

"Three county commissioners and three county auditors shall be elected in each county where such officers are chosen in the year one thousand nine hundred and twenty three, one for two years; one for four years; and one for six years; and, every two years thereafter, one for six years; and in the election of said officers, each qualified elector shall vote for one person, and the person having the highest number of votes shall be elected for the term of six years; any casual vacancy in the office of county commissioner or county auditor shall be filled by the court of common pleas of the county in which such vacancy shall occur, by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled."

This section is subject to further correction.

This report is respectfully submitted and the committee asks the privilege of further consideration.

For Report No. 7 see Appendix.

The CHAIRMAN. The report of the committee will take the usual course as provided by the motion?

Has Committee No. 4 anything to report?

Mr. PINCHOT. Mr. Chairman: I am requested by the chairman of the committee, Mr. Pepper, to offer the report of the committee.

For Report No. 8 see Appendix.

The CHAIRMAN. The committee will be continued and the report of the committee will take the course provided by the previous motion.

Has Committee No. 5 anything to report?

Mr. CONNELLY. Mr. Chairman: We ask to be continued.

The CHAIRMAN. The committee, under the rule, will be continued and make further report.

Has any member of the Commission anything further to offer at this time?

JOINT COMMITTEE CONSIDERATION.

Mr. ENGLISH. Mr. Chairman: Committee No. 3, in its report of yesterday and again today, refers to certain sections apparently

within its jurisdiction which it thought should be referred to Committee No. 5. There is some uncertainty in the minds of the members of our committee as to just what those sections are, and I would suggest, therefore, that we be given a memorandum, either through the Secretary or the chairman of that committee, as to those particular sections so that we may examine and study them.

The CHAIRMAN. The Secretary will be instructed to immediately furnish the committee with the information it desires. The suggestion of the Chair would be that it might be a good thing for those two committees to meet in joint session so as to have a clear understanding of the problem they are both concerned in. That can be arranged by the members of the two committees themselves.

Has any one anything further to offer? If not, the Chair will entertain a motion to adjourn at the pleasure of the Commission.

ADJOURNMENT.

Mr. KELLY. Mr. Chairman: I move that the Commission adjourn until 12 o'clock noon next Wednesday.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 10.45 o'clock A. M., the Commission adjourned until Wednesday, December 17, 1919, at 12 o'clock noon.

Senate Chamber.

Wednesday, December 17, 1919.

The Commission met at 12 o'clock noon.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—20.

Alter, Carson, Connelly, English, Fisher, Fox, Gordon, Kelly, Miller, Munce, Pepper, Perrine, Pinchot, Reed, Smith, Stackpole, Sulzberger, Thorpe, Warburton, Schaffer (Chairman).

ABSENT—5.

Cuyler, Palmer, Sharpless, Tyson, Wilson.

JOURNAL APPROVED.

The CHAIRMAN. As the Journal of the Commission is printed and before the members, I suppose it will be in order that a motion should be made that the reading of the Journal shall be dispensed with and the Journal approved.

Mrs. WARBURTON. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mr. SMITH. Mr. Chairman: I second the motion.

The motion was agreed to.

REPORTS FROM COMMITTEES.

The CHAIRMAN. The next business in order will be reports from committees. As Committee No. 1 has reported, and as its report in full is before the Commission, I take it for granted it has no report to make.

Has Committee No. 2 any further report to make?

Mr. CARSON. Mr. Chairman: Not at the present time. The committee asks to be continued.

The CHAIRMAN. The committee will be continued. Has Committee No. 3 any further report to make?

Mr. THORPE. Mr. Chairman: We have no further report at present and ask to be continued.

The CHAIRMAN. The committee will be continued. Has Committee No. 4 any report to make?

Mr. PEPPER. Mr. Chairman: Committee No. 4 has no report to make at present and asks to be continued.

The CHAIRMAN. The committee will be continued. Has Committee No. 5 any report to make?

Mr. SMITH. Mr. Chairman: We have no report at present and ask to be continued.

The CHAIRMAN. The committee will be continued.

Has any member of the Commission anything to offer or suggest at this time?

CHART ON EDUCATIONAL PROVISIONS.

Mr. THORPE. Mr. Chairman: I beg to submit a motion to this Commission. Owing to the importance of the consideration of all matters before the Commission and that they should receive due and careful notice, and owing to the very great importance of the subject of education, I have prepared a chart here showing the provisions in every constitution that has ever been in force in any state in this country, and also the acts of Congress relating to the appropriations of lands or land scrip for educational purposes. I have reduced this, with the assistance of my associates, to the form of a chart, that it might be, if it meets the approval of the Commission, printed and laid before the respective committees.

I move, therefore, that the chart be printed for the use of the Commission.

Mr. SMITH. Mr. Chairman: I second the motion.

The motion was agreed to.

PROCEDURE.

The CHAIRMAN. Has any other member of the Commission anything to suggest? If not, I take it for granted that it would be in order for the Commission to recess so that the committees that have not yet completed, may resume their work. The Chair might suggest a recess until two o'clock, when there is an order of business provided by motion last week.

Mr. CARSON. Mr. Chairman: Before the motion is put, may I ask for information? I assume that action by this body convened as a Commission will be taken on the recommendations of each committee, and that that is the proper time to make suggestions to them. Or, should suggestions be made now and modifications made of reports already on the Journal?

The CHAIRMAN. The Chair would think that suggestions should be made in the form of amendments when the Commission is sitting in the Committee of the Whole, as it will be, to consider the thoughts suggested.

Mr. CARSON. Mr. Chairman: That confirms the thought I had, but I did not wish to overlook any opportunity.

The CHAIRMAN. Is there anything else to come before the Commission?

RECESS.

Mr. FISHER. Mr. Chairman: I move that the Commission take a recess until 2 o'clock this afternoon.

Mr. PINCHOT. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 12.10 o'clock P. M., the Commission took a recess until 2 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting having arrived, the Commission will be in order.

PRINTING MEMORANDA AND BRIEFS.

Mr. FISHER. Mr. Chairman: From the Committee on Organization and Rules, I beg to report, and move the adoption, of the following resolution:

Resolved, That the Secretary shall cause to be printed and distributed to the members of the Commission, from day to day, all memoranda and briefs which he has been called upon to furnish by the Commission or by any committee or member of the Commission.

Mr. PEPPER. Mr. Chairman: I second the motion.

The CHAIRMAN. Is there any comment on the resolution? If not, as it appropriates money, the yeas and nays will be taken.

The yeas and nays were taken and were as follows:

YEAS—16.

Alter, Connelly, English, Fisher, Fox, Gordon, Munce, Pepper, Perrine, Pinchot, Reed, Smith, Stackpole, Thorpe, Warburton, Schaffer (Chairman).

NAYS—0.

The CHAIRMAN. A majority having voted in the affirmative, the resolution is adopted.

BRIEFING AND STENOGRAPHIC ASSISTANCE.

Mr. FISHER. Mr. Chairman: From the same committee, I offer the following resolution, and move its adoption:

Resolved, That the Secretary of the Commission shall be and is hereby authorized to employ any briefing and stenographic and typewriting assistance that may be necessary to enable him to comply promptly with any request made by the Commission or by any committee or member thereof, at a rate not to exceed fifteen dollars per day for briefing assistance, or four dollars per day for stenographic and typewriting assistance.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The CHAIRMAN. As this resolution appropriates money, the yeas and nays will be taken.

The yeas and nays were taken and were as follows:

YEAS—16.

Alter, Connelly, English, Fisher, Fox, Gordon, Munce, Pepper, Perrine, Pinchot, Reed, Smith, Stackpole, Thorpe, Warburton, Schaffer (Chairman).

NAYS—0.

The CHAIRMAN. A majority of the Commission having voted in the affirmative, the resolution is adopted.

Have any of the committees any further reports to make at this time?

Has any member of the Commission anything to suggest at this time? If not, we will proceed, under the resolution that was passed last week, to the consideration of the report of Committee No. 1.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

PROCEDURE.

Mr. ALTER. Mr. Chairman: I move that the sections covered by the report of Committee No. 1 be taken up section by section, and that as each section is read, unless some other motion be made, the question shall be upon the adoption of the recommendation of the committee.

Mr. SMITH. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. PINCHOT. Mr. Chairman: May I ask a question? Do I understand that action upon these sections at this time would mean the adoption of them by the Commission, or by the Commission sitting as the Committee of the Whole?

The CHAIRMAN. No, sir. The Commission is now acting as the Committee of the Whole, and the adoption is a tentative adoption for report to the Commission.

Mr. PINCHOT. Mr. Chairman: Speaking for myself, and as a laymember of the Commission—I am not a lawyer—I would like to raise the question whether or not, from the amount of consideration which the members of the Commission have already been able to give, it would be wise to reach even such a tentative conclusion as that at this time, without certain provisions for taking up the sections again before they are reported by the Committee of the Whole to the Commission.

The CHAIRMAN. I think hereafter, if any member of the Commission desires to call up, for further consideration, any section, the Chair would entertain such a request and the section could be called up again for consideration by the Committee of the Whole before it makes final report to the Commission. Does that answer the gentleman's thought? The thought of the Chair is that we go ahead with the work and get something accomplished and set aside, and we can proceed with business as it hereafter arises.

Mr. ENGLISH. Mr. Chairman: If I understand the motion correctly, it involves at this time a reading of the sections in the articles concerning which Committee No. 1 has reported, both those which are reported for amendment and those which are reported not for amendment. I have not, up to this time, had before me—I do not know how it is with other members of the Commission—the language of the report by the committee in connection with amendments that they propose. I know, for my part, that I am not prepared to vote on any of the sections which have been reported for amendment, and it seems to me that it might be generally advantageous at this time if we limit our consideration of this report to the sections that have been reported not for amendment. I merely offer that as a suggestion. I do not know how other members of the Commission feel; but, in view of the limited time within which we have been able to consider these amendments, I know that I personally am not ready to vote on anything that has been reported for amendment.

The CHAIRMAN. It seems to the Chair that the matter will work out as Mr. English suggests, because the committee has reported the entire Bill of Rights, Declaration of Rights, which consists of twenty-six sections, without amendment, so that that question will not arise until later, and when it does arise, any section that has been

amended, if the pleasure of the Committee is that that section be set aside for future consideration, that can be done. In order that the Chair may be enlightened as to the pleasure of the Committee, is it the desire that the Secretary shall read each particular section as it arises, or can that be obviated by reference? Whatever the pleasure of the Committee is, the Chair will adopt.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

PREAMBLE.

The CHAIRMAN. The first subject for consideration is the preamble of the Constitution, the report of Committee No. 1 being that the preamble shall stand without amendment.

The Secretary read the preamble as follows:

We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on the preamble to the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE I, SECTION I.

The CHAIRMAN. The first section for consideration is section I of article I of the Constitution, including the introductory matter preceding section I under the title "Liberty and Free Government," the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, we declare that—

Section 1. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life, and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 1 of article I of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE I.

Mr. FOX. Mr. Chairman: It seems to me that we can scarcely any of us have any question as to the adoption of the Bill of Rights, and unless there is some serious objection on the part of members of the Committee, I would like to move that article 1 be adopted in its entirety. It seems to me we can save some time in that way.

Mr. ALTER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

The CHAIRMAN. Before that motion is put, the Chair would like to know whether any members of the Committee who are present have any amendments that they would like to offer to article I of the Constitution.

STYLE AND ARRANGEMENT.

Mr. THORPE. Mr. Chairman: Just one thing. A committee, I suppose, will be appointed on arrangement and style. Doubtless there might be some verbal changes. If it is understood that the article is adopted subject to the verbal changes that the committee might make at the will of the Commission—

The CHAIRMAN. I take it for granted there will be a committee on style appointed to consider matters that arise in that way.

JURY TRIAL.

Mr. PINCHOT. Mr. Chairman: I want to rise to a question largely for my own information. I have heard that there is, among those who have studied the question, some doubt as to whether or not there is any reason, in certain civil cases, for requiring the complete assent of twelve men in jury trial; and I should greatly like, before the matter is finally disposed of, to be enlightened by those who know more about that than I do.

Mr. REED. Do you refer to section 6?

Mr. PINCHOT. Section 6.

The CHAIRMAN. There are gentlemen on the Commission who can throw light on the subject. In order that you may have it before the Committee, do you desire to offer an amendment to section 6, Mr. Pinchot?

Mr. PINCHOT. Mr. Chairman: No. I am merely in the situation where I am doubtful as to what ought to be done. I have discussed the matter with Judge Reed and Mr. Pepper, and the information that I have from them is in favor of the retention of the section as it is; and yet, I do know that there is an opinion among those who have a right to be heard that some modification should be considered and, not being experienced in such matters, I am merely seeking light.

Mr. REED. Mr. Chairman: I have been dragged into this. Mr. Pinchot's question is quite serious with him as to whether or not there ought to be an amendment of this section of the Constitution in some way so that seven, nine or ten of a jury might find a verdict in civil cases. Now, a good deal could be said on both sides of that and, of course, in the interest of conservatism, some of us would not like to see the jury system changed very much; but I only rise to bring Mr. Pepper into this because he has pronounced views on the subject.

The CHAIRMAN. The gentleman from Allegheny, Mr. Reed, having passed the section to the gentleman from Philadelphia, Mr. Pepper, we would be glad to hear from Mr. Pepper.

Mr. PEPPER. Mr. Chairman: There are many men present who could speak far more authoritatively than I on this subject. My own view can be stated very briefly. It is this: That if you are going to retain the jury as an institution for the decision of questions of fact in civil cases, it seems to me to be essential that you should re-

tain also the feature of unanimity if you desire to get the best results from your institution. I believe that the sense of responsibility resting upon twelve men, arising out of the circumstance that they must be unanimous in order that a verdict may be returned either way, is really vital to the successful operation of trial by jury. I think the instant that it becomes a question of minority and majority, the whole mental attitude of the members of a jury towards the question submitted to them is changed; that you get less responsibility, less individual effort and more pulling and hauling, more trading, more compromise, than you do where it is understood as essential that the result should be reached by unanimity.

I began by saying, *if* you are to retain the institution of trial by jury in civil cases, that unanimity seems to be essential. By putting it in that way, I do not mean to cast any doubt upon the wisdom of retaining the jury for the decision of questions of fact in civil cases. It seems to be a sheet-anchor, no less in civil than in criminal cases, and, as I stated, it seems that the principle of unanimity is the thing which accounts for the extraordinarily sound results that you get year in and year out from the operation of the system under the present conditions.

I hope the report of the committee will prevail.

INFORMATION.

The CHAIRMAN. Some of the gentlemen of the Commission who are here now were not present when the motion made by Judge Fox was taken up, and for their information I will explain that on a motion which was made and adopted we proceeded to consider the report of Committee No. 1, taking it up section by section as the sections are in the different articles of the Constitution. The report of Committee No. 1 on the preamble has been adopted, and also the report of Committee No. 1 on section 1. At that point it was moved by Judge Fox, and his motion has been seconded, that it was possible that there was no objection to the report of Committee No. 1 in the mind of any member of the Commission, and as Committee No. 1 had reported in favor of article I in its entirety remaining as it is, that the whole article could be voted upon. I then suggested to the Committee whether or not any members of the Committee had any amendments that they desired to propose to any of the sections of article I, and no amendments have been suggested up to this time. If any of those members who were not in the room when that was done have any amendments to propose to article I, and will so advise the Chair, it is possible that the motion of Judge Fox ought not to prevail. We are on the Declaration of Rights.

Mr. GORDON. Mr. Chairman: I observe from the report of Committee No. 1, that it has reported that the first eighteen sections of the Bill of Rights will stand as they are now written, but there is no report upon the following eight sections of the Bill of Rights, and I wondered whether this "lost legion" might be recovered by the chairman, Mr. Alter.

Mr. ALTER. Mr. Chairman: I had not noticed the omission that Judge Gordon refers to. Is he certain that he is looking at the right section of the right article?

The CHAIRMAN. I have the original report of Committee No. 1 before me, and it reads: "We are of the opinion that no change

should be made in the preamble of the Constitution, or in article I thereof, the Declaration of Rights.

Mr. GORDON. Mr. Chairman: Their report covers the entire article?

The CHAIRMAN. Yes, sir; it does. If no member of the Committee has any amendments to suggest to article I of the Constitution—

Mr. CARSON. Mr. Chairman: What was the motion of Judge Fox?

ARTICLE I, SECTIONS 2 TO 26, INCLUSIVE.

The CHAIRMAN. The motion of Judge Fox is that we take up the entire article 1 and pass it in its entirety; the question being on that article.

The Secretary read the remainder of the article as follows:

Section 2. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

Section 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience and no preference shall ever be given by law to any religious establishments or modes of worship.

Section 4. No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this commonwealth.

Section 5. Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 6. Trial by jury shall be as heretofore, and the right thereof remain inviolate.

Section 7. The printing press shall be free to every person who may undertake to examine the proceedings of the legislature or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. No conviction shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made shall be established to the satisfaction of the jury; and in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Section 8. The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Section 9. In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land.

Section 10. No person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. No person shall, for the same offense, be twice put into jeopardy of life or limb; nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured.

Section 11. All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be

brought against the commonwealth in such manner, in such courts and in such cases as the legislature may by law direct.

Section 12. No power of suspending laws shall be exercised unless by the legislature or by its authority.

Section 13. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Section 14. All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

Section 15. No commission of oyer and terminer or jail delivery shall be issued.

Section 16. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law.

Section 17. No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

Section 18. No person shall be attainted of treason or felony by the legislature.

Section 19. No attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth. The estate of such persons as shall destroy their own lives shall descend or vest as in cases of natural death, and if any person shall be killed by casualty there shall be no forfeiture by reason thereof.

Section 20. The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.

Section 21. The right of the citizens to bear arms in defense of themselves and the state shall not be questioned.

Section 22. No standing army shall, in time of peace, be kept up without the consent of the legislature, and the military shall in all cases and at all times be in strict subordination to the civil power.

Section 23. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

Section 24. The legislature shall not grant any title of nobility or hereditary distinction, nor create any office the appointment to which shall be for a longer term than during good behavior.

Section 25. Emigration from the state shall not be prohibited.

Section 26. To guard against transgression of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE II.

The CHAIRMAN. The report of Committee No. 1 is that sections Nos. 1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18, that is to say, the first eighteen sections of article II—

Mr. CARSON. Mr. Chairman: Sections 4 and 6 are recommended for amendment.

ARTICLE II, SECTION 1.

The CHAIRMAN. That is so. It seems to the Chair that we are bound to take up article II section by section; otherwise we will become confused.

The next section in order for consideration is section 1 of article II of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 1. The legislative power of this commonwealth shall be vested in a general assembly which shall consist of a Senate and a House of Representatives.

On the question,

Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: I move that the recommendation of Committee No. 1 be adopted as to that section.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question.

Will the Committee agree to the motion?

Mr. PINCHOT. Mr. Chairman: I merely want to call attention to the fact that this article includes the question of the initiative and referendum, and that as it is worded now the initiative and referendum would be excluded. There is, as I understand it, a considerable body of opinion in the state that believes it might be wise to consider and possibly adopt the initiative and referendum as part of our constitutional policy, and, without at the moment expressing any opinion of my own on the subject, I do want to raise the question before the Commission as to whether or not it might be wise to consider that as one of the questions involved in section 1 of the second article.

The CHAIRMAN. Is there any further discussion on the section which is now before the Committee?

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE II, SECTION 2.

The CHAIRMAN. The next section in order for consideration is section 2 of article II of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 2. Members of the general assembly shall be chosen at the general election every second year. Their term of service shall begin on the first day of December next after their election. Whenever a vacancy shall occur in either House, the presiding officer thereof shall issue a writ of election to fill such vacancy for the remainder of the term.

On the question,

Will the Committee adopt the report?

Mr. FOX. Mr. Chairman: I move that the report of Committee No. 1 on section 2 of article II of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE II, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of article II of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 3. Senators shall be elected for the term of four years and representatives for the term of two years.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 3 of article II of the Constitution be adopted.

Mr. STACKPOLE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE II, SECTION 4.

The CHAIRMAN. The next section in order for consideration is section 4 of article II of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 4. The general assembly shall meet at twelve o'clock noon on the first Tuesday of January every second year, and at other times when convened by the Governor.

On the question,

Will the Committee adopt the report?

The CHAIRMAN. The Chair would like to suggest to Mr. English that this section is amended in such an obviously correct way, possibly under the amendment of the Federal Constitution, that there might be no objection to taking that section up at this time. I take it for granted that all the members of the Committee have before them the report of Committee No. 1 which shows how this section is to be amended.

Mr. FISHER. Mr. Chairman: I move that the report of Committee No. 1 on section 4 of article II of the Constitution be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE II, SECTION 5.

The CHAIRMAN. The next section in order for consideration is section 5 of article II of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 5. Senators shall be at least twenty-five years of age and representatives twenty-one years of age. They shall have been citizens and inhabitants of the state four years and inhabitants of their respective districts one year next before their election (unless absent on the public business of the United States or of this state), and shall reside in their respective districts during their terms of service.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 5 of article II of the Constitution be adopted.

Mr. PERRINE. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. FOX. Mr. Chairman: I would like to ask the chairman of Committee No. 1 whether the qualification "They shall have been citizens and inhabitants of the state four years" ought to stand just as it is, my thought being this: The section provides that senators shall be twenty-five years of age and representatives twenty-one years of age. It occurred to me that if a young man of twenty-one was elected he could hardly have been a citizen for four years.

Mr. FISHER. Mr. Chairman: It requires that if he was born in the state. Suppose he was not born in the state?

Mr. FOX. Mr. Chairman: Would it not be well to strike out the word "citizens?"

Mr. GORDON. Mr. Chairman: He would only have to be older if he was not born in this state.

Mr. KELLY. Mr. Chairman: I may be wrong, but my impression is that the minor children of naturalized citizens become citizens at the time of the naturalization of the father, so that even though born in a foreign country they do not have to wait until their majority to become citizens.

The CHAIRMAN. Are there any other remarks by any member of the Committee?

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE II. SECTION 6.

The CHAIRMAN. The next section in order for consideration is section 6 of article II of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 6. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office or place of profit under this commonwealth, which shall have been created or the emoluments whereof increased during such time; and no member of Congress or other person holding any civil office (except of attorney-at-law) under the United States or this commonwealth shall be a member of either House during his continuance in office.

On the question,

Will the Committee adopt the report?

DISQUALIFICATION FOR OFFICE.

The CHAIRMAN. Is there any objection, Mr. English, to the consideration of that section as reported at this time?

Mr. ENGLISH. Mr. Chairman: As I understand the sense of the amendment it is that the disqualification be confined to offices that have been created or the emoluments for which have been increased during the term for which the particular officer shall have been elected.

The CHAIRMAN. That is the Chair's understanding; yes, sir.

Mr. ENGLISH. Mr. Chairman: I was just wondering whether something should not be done with the construction of the section in view of the fact that in the future, in Pennsylvania, when we get all through with this Constitution, it might be determined that there would be no objection to women sitting in the legislature. Of course, this refers to the disqualification only; but it seems to me that the language might be changed, having that thought in mind, and something substituted for the word "he." I have no objection, of course, to the vote being taken at this time.

Mr. SULZBERGER. Mr. Chairman: I will broaden the amendment by striking out "shall have been created or the emoluments whereof increased during such time." According to my reading of the Constitution as it is, it was intended that no pressure by the executive or any other department, or hope of reward, near or distant, should be allowed to be used to influence legislative action. Now then, if that is so, the amendment is quite within the same principle as the original article was, and you would merely reduce the number of instances in which the principle was applied. I think the principle as originally put in the Constitution was sound and should

not be disturbed, and I would, therefore, move to amend the committee's report by striking out "which shall have been created or the emoluments whereof increased during such time."

Mr. GORDON. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. FISHER. Mr. Chairman: I was a member of the sub-committee which reported this section with the amendment suggested. The section as reported from the committee restores this provision as it was, I believe, in the Constitution of 1790. Now, I am inclined to agree, on more deliberation, with Judge Sulzberger that it is a mistake to broaden the powers of the Governor in making appointments of members of either branch of the legislature. It is true that there is some force in limiting the appointment to offices created or the emoluments of which have been changed during the term for which the member is elected; but I am quite satisfied, from my observation and experience in the legislature, that if the Governor is empowered under the Constitution to appoint members of the legislature to other offices, he will be importuned and embarrassed very often for appointment by members to vacancies which may occur during their term of service; and it seems to be apparent to any one who has legislative experience that a member of the Senate or a member of the legislature might be in a position to make his application to the Governor for such preferment very embarrassing during times of political excitement and contest in the legislature. Therefore, after more mature deliberation, I am inclined to accept the view as suggested by Judge Sulzberger in his motion for amendment.

Mr. CARSON. Mr. Chairman: May I ask for information as to what controlling reason influenced the committee in reporting the change in that language of the article? Why did you narrow the field in which the Governor could act by making it only applicable to members whose emoluments have been increased during the time of their incumbency in office? What was it, Mr. Chairman, that led you to insert these words?

Mr. ALTER. Mr. Chairman: The thought of the committee, and my own thought, was this: The proposed amendment does not narrow the field within which the Governor can act, but widens the field within which he can act as the section stands in the present Constitution. The Governor cannot appoint, nor can any appointing power appoint, any member of the Senate or House to any civil office during the entire period for which he shall have been elected.

Mr. CARSON. That is, you cannot take a member of the House or Senate and appoint him to the bench?

Mr. ALTER. No, sir.

Mr. CARSON. No.

Mr. ALTER. The amendment would widen the field within which the Governor may act and apply the disqualification only to offices which have been created or the emoluments of which have been increased during the period of the service of the senator or member concerned. Now, it seems to me that the provision in the Constitution as it stands assumes too much frailty upon the part of the Governor. The provision in the Federal Constitution, as I understand it, is similar to that recommended here by the committee. To follow the suggestion made by Mr. Carson, if a prominent member of

the bar of any county is asked to accept election to the Senate of Pennsylvania, he is faced with the conditions that if he accepts that office, then, in the event of a vacancy occurring on the bench in his county during the next four years, he is absolutely barred from being appointed to that vacancy, however great may be the desire of the bar or the citizens of his county that he be appointed.

Mr. CARSON. You will pardon me for the interruption, but you will recall that a President of the United States, after failing to send to the Senate a name which was acceptable for the high office of associate justice of the Supreme Court of the United States, finally turned and selected one of the members of the Senate and appointed him to the bench, and that man now holds the office of chief justice of the Supreme Court of the United States.

Mr. ALTER. Vindicating the original appointment; and it would have been a great pity, therefore, if the appointee, by reason of the fact that he was a member of the Senate, had been barred from the appointment to the Supreme Court of the United States. If the Constitution of the United States were as the Constitution of the State of Pennsylvania now is, the present chief justice of the Supreme Court of the United States would have been ineligible to the appointment as justice of that court at the time he was appointed. As a general proposition, I believe that the present Constitution indicates too much of the spirit of distrust of the legislators, and that the position of legislator would be improved in the public esteem if we had not in our organic law indicated the presumption that they would be men of frail character, not as strong as members of Congress, and, therefore, necessarily bound by more restrictions to prevent them from failing to be honest, as strong men should be honest. This was the thought in my mind, and, as I understand, in the mind of the committee as we discussed it, that we should not assume that the members of the legislature would need such extraordinary precautions to be taken in the Constitution for their protection.

Mr. REED. Mr. Chairman: Before putting the question, I would like to ask the chairman of Committee No. 1 what their reason was for striking out the qualification of members of the militia being members of the House or Senate; not that I hold any brief for the militia, but I want to know the reason.

Mr. ALTER. Mr. Chairman: I think that was merely a matter of language. We inserted the word "civil" so that the restriction only applied to civil offices, and that rendered it unnecessary to use the words "or in the militia."

Mr. REED. Is not an attorney-at-law——

Mr. ALTER. Yes, sir.

Mr. REED. The way you worded that, an officer of the militia is not eligible to be a member of either House.

Mr. ALTER. No, sir; it does not bar him. As we understand it, it now reads "or other person holding any office (except of attorney-at-law or in the militia)." As we suggest, it is "or other person holding any civil office (except attorney-at-law)."

Mr. REED. Exactly. Then a man who is a member of the militia cannot be a member of the House or Senate?

Mr. ALTER. Oh, yes, he can; only civil officers are barred. A member of the militia is not a civil officer.

Mr. REED. What is the objection to leaving it where it is perfectly clear?

The CHAIRMAN. Has any other member of the Committee anything to say on this subject at this time? If not, the question is upon the amendment proposed by Judge Sulzberger which, as the Chair understands it, is to strike out of the amendment suggested by the committee the words "shall have been created or the emoluments whereof increased during such time."

On the question recurring,

Will the Committee adopt the motion?

It was adopted.

On the question,

Will the Committee adopt the report as amended?

The CHAIRMAN. The question now recurs upon the section suggested by Committee No. 1 as amended by Judge Sulzberger's amendment. As the Chairman understands this amendment, it will leave out the words "which shall have been created or the emoluments whereof increased during such time," but will add the words "or place of profit" to the section of the Constitution as it now stands.

Mr. REED. Mr. Chairman: It seems to me that we are adding a number of these amendments and I really would like the Committee to think of this. We do not want to have too many amendments submitted unless they are real, substantial and merited amendments. We had better pass the section as it was, and I would move to amend by substituting the present section in place of the amended section, except retaining the words "or place of profit."

Mr. SULZBERGER. Mr. Chairman: I second the motion, and I would like to ask Mr. Alter whether there is any significance in the addition of the words "or place of profit."

On the question,

Will the Committee agree to the motion?

The CHAIRMAN. May I answer that question? I think I was responsible for putting the words "or place of profit" in for the reason that the question has arisen in the Attorney General's office as to whether or not members of the legislature could be appointed to places of profit which had been created by the legislature, but which are not, in the strict sense, offices. That was the reason for the addition of the words.

Mr. SULZBERGER. Mr. Chairman: That is a substantial reason, but regarding the militia part, I second Judge Reed's motion.

The CHAIRMAN. Then the question before the Committee is to substitute for the report of Committee No. 1, section 6 of article II of the Constitution as it now is.

Mr. REED. Mr. Chairman: With the addition of the words, "or place of profit."

Mr. ALTER. Mr. Chairman: If you leave it as it now is, except by inserting the words "or place of profit," then the net result of the action is that you are further restricting the eligibility of members of the legislature, and I think that their eligibility should be widened rather than narrowed. I think there is considerable force also in the suggestion of Judge Reed that where the amendment is a trifling one, which probably would not have been recommended except in connection with some very important amend-

ment to some section, it is better not to have too many amendments.

The CHAIRMAN. Then the question is upon the motion of Judge Reed to substitute section 6 of article II of the Constitution as it is for the amended section recommended by Committee No. 1 with the addition of the words "or place of profit." Then it would recur really on adding the words "or place of profit" and leave in the reference to militia.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE II, SECTION 7.

The CHAIRMAN. The next section in order for consideration is section 7, of article II of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 7. No person hereafter convicted of embezzlement of public moneys, bribery, perjury or other infamous crime shall be eligible to the general assembly, or capable of holding any office of trust or profit in this commonwealth.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 7 of article II be adopted.

Mr. STACKPOLE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE II, SECTIONS 8 TO 18, INCLUSIVE.

Mr. PEPPER. Mr. Chairman: Having passed the sections which have been suggested for amendment, we are now, with reference to the residue of these sections recommended to stand without amendment, in the same position that we were in when it was suggested, in connection with article I, that we deal with all of the sections en bloc. I suggest, sir, that it would expedite the proceedings if the Chair were to inquire whether any amendments as to any of the residue of the sections in this article are to be offered, and if not, that the question be put on all of them. They are mostly matters which I think would give rise to no difference of opinion.

The CHAIRMAN. In adopting the suggestion of the gentleman from Philadelphia, Mr. Pepper, the Chair inquires of the members of the Committee as to whether or not there are any amendments to be submitted to sections 8 to 18, both inclusive, being the balance of article II. If not, the vote on them can be taken en bloc. Has any member of the Committee any amendment to suggest to any of these sections of article II? If not, the Chair will entertain a motion to adopt en bloc the report of Committee No. 1 on sections 8 to 18, both inclusive, of article II of the Constitution.

The Secretary read the sections as follows:

Section 8. The members of the general assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for service upon committee or otherwise. No member of either House shall, during the term for which he may have been elected, receive any increase of salary, or mileage, under any law passed during such term.

Section 9. The Senate shall, at the beginning and close of each regular session and at such other times as may be necessary, elect one of its members president pro tempore, who shall perform the duties of the Lieutenant Governor, in any case of absence or disability of that officer, and whenever the said office of Lieutenant Governor shall be vacant. The House of Representatives shall elect one of its members as speaker. Each House shall choose its other officers, and shall judge of the election and qualification of its members.

Section 10. A majority of each House shall constitute a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members.

Section 11. Each House shall have power to determine the rules of its proceedings and punish its members or other persons for contempt or disorderly behavior in its presence, to enforce obedience to its process, to protect its members against violence or offers of bribes or private solicitation, and, with the concurrence of two-thirds, to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the legislature of a free state. A member expelled for corruption shall not thereafter be eligible to either House, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

Section 12. Each House shall keep a journal of its proceedings and from time to time publish the same, except such parts as require secrecy, and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journal.

Section 13. The sessions of each House and of committees of the whole shall be open, unless when the business is such as ought to be kept secret.

Section 14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 15. The members of the general assembly shall in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

Section 16. The state shall be divided into fifty senatorial districts of compact and contiguous territory as nearly equal in population as may be, and each district shall be entitled to elect one senator. Each county containing one or more ratios of population shall be entitled to one senator for each ratio, and to an additional senator for a surplus of population exceeding three-fifths of a ratio, but no county shall form a separate district unless it shall contain four-fifths of a ratio, except where the adjoining counties are each entitled to one or more senators, when such county may be assigned a senator on less than four-fifths and exceeding one-half of a ratio; and no county shall be divided unless entitled to two or more senators. No city or county shall be entitled to separate representation exceeding one-sixth of the whole number of senators. No ward, borough or township shall be divided in the formation of a district. The senatorial ratio shall be ascertained by dividing the whole population of the state by the number fifty.

Section 17. The members of the House of Representatives shall be apportioned among the several counties, on a ratio obtained by dividing the population of the state as ascertained by the most recent United States census by two hundred. Every county containing less than five ratios shall have one representative for every full ratio, and an additional representative when the surplus exceeds half a ratio; but each county shall have at least one representative. Every county containing five ratios or more shall have one representative for every full ratio. Every city containing a population equal to a ratio shall elect separately its proportion of the representatives allotted to the county in which it is located. Every city entitled to more than four representatives, and every county having over one hundred thousand inhabitants shall be divided into districts of compact and contiguous territory, each district to elect its proportion of representatives according to its population, but no district shall elect more than four representatives.

Section 18. The general assembly at its first session after the adoption of this Constitution, and immediately after each United States decennial census, shall apportion the state into senatorial and representative districts agreeably to the provisions of the two next preceding sections.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: I move that the report of Committee No. 1 on sections 8 to 18, both inclusive, of article II of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 1. No law shall be passed except by bill and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose.

On the question,

Will the Committee adopt the report?

Mr. CONNELLY. Mr. Chairman: I move that the report of Committee No. 1 on section 1 of article III of the Constitution be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 2.

The CHAIRMAN. The next section in order for consideration is section 2 of article III of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 2. No bill shall be considered unless referred to a committee, returned therefrom, and printed for the use of the members. Every bill before final passage shall be punctuated with such punctuation as it is intended to contain.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 1 of article III of the Constitution be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

BILLS IN COMMITTEE.

Mr. PINCHOT. Mr. Chairman: I want again to raise a question as a layman, and also as one having had more or less experience with legislative committees, as to whether this section ought not to contain such words as would permit the discharge of a committee from the consideration of a bill when the committee has refused to report the bill. In no other way can it be brought before the House for decision. This is a matter which has had a good deal of consideration, as you gentlemen know, and which could be made very greatly to facilitate the passage of legislation and especially to prevent pickling of bills in committee, and my own personal feeling is very strong that such an amendment should be included, although I am not now prepared to suggest the wording for it.

PUNCTUATION OF BILLS.

Mr. SULZBERGER. Mr. Chairman: I have another objection to the proposed amendment, and it is that "Every bill before final passage shall be punctuated with such punctuation as it is intended to contain." If you put that into the Constitution, punctuation will become an important element in the construction of statutes. The

experience, of course, for ages has been that the interpretation of words is an extremely difficult process. Now, words have a standard much nearer to a universal one than punctuation has. If we introduce the element of punctuation, we introduce a new source of causes for litigation and astute argument, with multiplied grounds of controversy, and in the end the probability would be that many courts would decide the punctuation to be as they think it ought to be. Why introduce a new element of doubt, distraction and confusion? What good reason can there be for it?

I therefore move to amend the section recommended by the committee by striking out the words; "Every bill before final passage shall be punctuated with such punctuation as it is intended to contain."

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. GORDON. Mr. Chairman: In seconding the amendment, I wish to say that I cordially agree with my colleague from Philadelphia, Mr. Sulzberger. I think this amendment to the Constitution would only promote greater doubt and confusion in litigation. As he has pointed out, punctuation marks are arbitrary symbols. Very often they represent nothing more than emphasis or the lack of it upon the part of the writer, but they have no distinct and definite measurable meaning like words. But if they are inserted in an act and made a necessary part of it by this constitutional amendment, then the courts could be called upon to decide the meaning of marks of punctuation, and they would mean exactly what the person who put them in meant, and not what they are determined to be by some studied permanent canon of interpretation. It seems to me that this would clearly promote doubt and litigation.

The CHAIRMAN. It might be well that the chairman of the committee should explain why the committee added this clause to the section.

Mr. ALTER. Mr. Chairman: The suggestion that was made in the committee, and which was adopted by the committee after some consideration, was that under the present practice when a bill is introduced, of course, it is introduced with its punctuation, the punctuation put in the bill by its draftsman. It is printed then for the use of the members without any punctuation, and goes through the Senate and House and is approved by the Governor without any punctuation in it whatever. It then goes to the office of the Secretary of the Commonwealth, where in the laws, as published, there is such punctuation as is inserted by the clerks in the office of the Secretary of the Commonwealth, so that in the laws as they are placed in the hands of the courts and in the hands of the people there is punctuation. That may not be the punctuation which was in the bill when it was introduced, nor may it be the punctuation which would be consistent with the understanding of the bill as it was acted upon by the members of the legislature, but merely the punctuation which seemed proper to the clerk in the office of the Secretary of the Commonwealth. Now, of course, the punctuation which is put in the laws in the office of the Secretary of the Commonwealth is not binding. Courts pay no attention to it. But it seemed to the committee that, as the laws as published are published with punc-

tuation, or are to be published with punctuation, that punctuation should be prescribed by the bodies enacting the laws, instead of by some one into whose hands they come at the time they are to be printed. Those were the thoughts presented in the committee, and I recite them for whatever use they may be to the members of the Committee at this time.

Mr. SULZBERGER. Mr. Chairman: I would like to correct one slight inadvertence of my friend from Pittsburgh, Mr. Alter. The laws as at present published are published without punctuation. There are, it is true, punctuation marks printed on the paper; but no court bothers itself about the punctuation. The punctuation mark is not there; but if you put it in the Constitution, then the punctuation mark is there, and you will then have the legislature legislating upon the subject of punctuation, which, in my opinion, is not one of the powers that ought to be confided to it by the people.

Mr. GORDON. Mr. Chairman: I would like to ask Mr. Alter if he knows of any Constitution that provides that the laws should be punctuated.

Mr. ALTER. Mr. Chairman: My attention was not called to any such Constitution.

Mr. GORDON. Mr. Chairman: I would like to ask Mr. Alter if he does not know that there are Constitutions that provide that the laws shall not be punctuated.

Mr. ALTER. Mr. Chairman: I do not know anything on that subject.

Mr. SULZBERGER. Mr. Chairman: The common law of our Constitution so provides.

Mr. GORDON. Mr. Chairman: In addition to what Judge Sulzberger says, and interpreting Mr. Alter's remark, because the clerks in publishing or enrolling, if you please, the acts insert the punctuation marks which are now of no consequence in court and are disregarded; therefore, the committee thought it might be as well to make it obligatory that punctuation marks should be put in the law. Now, if they are put in, it must be for some purpose; it must be because they will have some legislative meaning. But who shall determine the legislative meaning of a comma or of a semicolon? A man might be hung on a parenthesis or for the lack of it. I think that ought not to be. I call to the gentleman's mind, in his literary rambles, a vivid illustration. Suppose the draftsman of an act would insert punctuation and put in punctuation like Thomas Carlyle's and indulge in extensive dashes and slides and parentheses and other things of that kind. Why, there would be no possible manner of interpreting it. It seems to me that this is a clear error in the report of the committee.

The CHAIRMAN. I may say that it was the recollection of certain members of the committee that courts had paid judicial attention, in the construction of certain acts, to the punctuation, and it was thought wise to get this subject before the Commission, sitting as a committee of the whole, in order that it might discuss all the phases of it.

Mr. ALTER. Mr. Chairman: I have stated, I think, that we realized that punctuation has nothing to do with the meaning of the act, because the courts probably would pay no attention to it; but the published laws go into the hands of a great many people

who are not learned in the law, and I would think that if the acts as published are punctuated at all, then they should be punctuated by the body that enacts them; and it might perhaps be a good suggestion to provide that the acts as published for the people should be published without punctuation, so that they may not be misled by some punctuation voluntarily placed in the act.

Mr. SULZBERGER. Mr. Chairman: If Mr. Alter will move that amendment, I will cheerfully second it.

Mr. CARSON. Mr. Chairman: Does that mean that capitals are to be excluded, so that you do not know where a sentence terminates and where it begins, and that everything is to be printed in uniform type? That will bewilder the ordinary man who reads an act of assembly. I can readily understand how judges, in interpreting an act, must necessarily disregard the punctuation marks which appear in the pamphlet laws; but to the ordinary layman, whose only knowledge of the acts of the legislature comes from the reading of the laws themselves, I think it would be utterly bewildering if he found himself reading a section which occupied the greater part of a page and which read through from beginning to end without a single break or variation in the size of the letters to indicate where the emphasis should be or where the qualification of thought should begin.

Mr. ALTER. Just like a telegram.

Mr. CARSON. Just like a telegram, except that a cautious person sending a message will very frequently put the word "stop" after certain words, which indicates where the period is to be inserted. It is somewhat interesting to me to hear from Mr. Alter, who has legislative experience, which I lack, that the punctuation originates in the office of the Secretary of the Commonwealth. I had supposed that it either originated in the committee room and the bill was reported out with such punctuation marks as the committee had presented to it, or else that at some stage of the passage of the bill through either House other marks were substituted. I had handed to me this morning a criticism of this amendment as reported, which suggests that instead of taking the language of the committee's amendment as contained in its report, these words should be substituted: "No bill shall be considered unless referred to a committee, returned therefrom, and printed for the use of the members, with the punctuation which it is intended to contain." The language of the committee's suggested amendment is: "Every bill before final passage shall be punctuated with such punctuation as it is intended to contain." Now, bills as a general rule, if I am properly advised, are not open to discussion, as a general proposition, on final passage, and if the proposed punctuation is left until final passage, it must necessarily be done by some committee clerk in the hurry which is customary to the final passage of bills, and the evil which it is intended to correct will be made still worse. Whereas, if declared for the information of the members on the floor that the committee had adopted a certain method of punctuation and reported out the bill in that shape, then there would be an aid to the legislative comprehension of the committee's views.

Mr. SULZBERGER. Mr. Chairman: It still would establish punctuation as a constitutional requirement, and it would be open to

all the objections to the amendment proposed by the committee. You cannot get rid of it if you write it into the Constitution.

The CHAIRMAN. The Chair has sent for a copy of Purdon's Digest, our working book as lawyers, and finds that the punctuation is carried into the digest, I presume, just as it is in the pamphlet laws. As I understand the motion of Judge Sulzberger, it is that the words "Every bill before final passage shall be punctuated with such punctuation as it is intended to contain" shall be stricken out of the section, and that the section shall remain as it is in the Constitution at present. Is that correct, Judge Sulzberger? Am I correct in my understanding of your motion?

Mr. SULZBERGER. Yes, sir.

BILLS IN COMMITTEE.

Mr. PINCHOT. Mr. Chairman: I wonder if Judge Sulzberger would be willing to modify that motion sufficiently to permit me to make a motion afterwards that the committee be requested to amend the section so that it would permit the discharge of a committee from the consideration of bills, and thereby make the pickling of bills impossible.

The CHAIRMAN. Is not the matter of legislative procedure covered by rules of legislation? The gentlemen who have served in the Senate and House can answer that question.

Mr. PINCHOT. Mr. Chairman: Do not the words "returned therefrom" require that the legislature should not act on the bill unless reported from committee?

The CHAIRMAN. Mr. Alter was speaker of the House, and there are several others on the Commission who have had legislative experience.

Mr. ALTER. Mr. Chairman: There is nothing better established than the power of the House to discharge a committee, to take a bill out of the hands of a committee and put it in the hands of another committee, or bring it out on the floor by action of the House, and then proceed to act, upon its return from the committee, when the House takes it out of the hands of the committee. This practice is thoroughly established over a long period of years.

ENACTING CLAUSE OF BILLS.

Mr. CARSON. Mr. Chairman: I am going to ask the chairman of the committee whether there would be any objections, in the judgment of that committee, to another amendment to be attached to that section, which would provide that the enacting clause of every bill shall precede section 1 thereof. If you look at the present acts of assembly, you will find that section 1 always contains the enacting clause. Now, it sometimes happens that the first section is repealed, and the enacting clause goes with it, which might subvert the foundations of the remaining portion of the statute, leaving it without an expression of legislative will. If you insert the enacting clause of every bill so that it shall precede section 1 thereof, you guard against danger of that sort.

The CHAIRMAN. That is proposed by Mr. Carson as an amendment?

Mr. FISHER. Mr. Chairman: I was going to make this suggestion, with due deference to ex-Attorney General Carson, that the matter now before the Committee is the amendment offered by Judge Sulzberger. Now, that should be disposed of before any other matter is brought before the Committee.

Mr. CARSON. I think you are quite right.

Mr. FISHER. Mr. Chairman: I suggest that Mr. Carson might then offer his suggestion in the form of another amendment on which action could be taken.

Mr. CARSON. Mr. Chairman: I withdraw that for the present.

The CHAIRMAN. The question recurs on Judge Sulzberger's amendment to strike out the words "Every bill before final passage shall be punctuated with such punctuation as it is intended to contain."

On the question recurring,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

Mr. CARSON. Mr. Chairman: Now I will move, sir, to amend by adding the words "The enacting clause of every bill shall precede section 1 thereof."

Mr. ALTER. Mr. Chairman: I second the amendment.

It was agreed to.

On the question recurring,

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE III, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of Article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 3. No bill except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 3 of article III of the Constitution be adopted.

Mr. FOX. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

PUNCTUATION.

Mr. FOX. Mr. Chairman: I rise simply to ask for information. We have adopted already quite a number of sections and articles of the Constitution tentatively which have been punctuated. Are we adopting the punctuation?

The CHAIRMAN. That is referred to Judge Sulzberger.

Mr. SULZBERGER. Mr. Chairman: I think my friend's remark is based upon an error of fact. We have not adopted any punctuation.

TITLE OF BILLS.

The CHAIRMAN. May the Chair just call to the attention of the Committee the fact that it seemed important to the committee that had before it the section we are now considering, as to whether or not any better word could be used in section 3 of article III than the word "clearly." As we all know, that word has given rise to an immense amount of litigation. The committee had no better word to suggest. I was on that committee myself, and it was the subject of a great deal of discussion.

Mr. SULZBERGER. Mr. Chairman: If the Constitution of 1873 had omitted the word "clearly," it would clearly have been less difficult to understand, because, if it were expressed in the title it would be expressed, and there is no other way except by expressing so people can understand it, and that is expressing clearly; but to strike out the word "clearly," would, I think, be a mistake, because it would be a mere verbal criticism, and we should not submit to the people any amendment that involves mere literary taste. I do not think that we are justified in expending the printing money for that kind of amendment.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE III, SECTION 4.

The CHAIRMAN. The next section in order for consideration is section 4 of article III of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 4. Every bill shall be read on three different days in each House; all amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, and no bill shall become a law, unless on its final passage, the vote be taken by yeas and nays, the names of the persons voting for and against the same be entered on the journal, and a majority of the members elected to each House be reported thereon as voting in its favor.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 4 of article III of the Constitution be adopted.

Mr. ENGLISH. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

READING OF BILLS.

Mr. SULZBERGER. Mr. Chairman: I would like to ask the gentleman from Allegheny, Mr. Alter, whether the purport of this amendment is not merely to strike out the words "at length."

Mr. ALTER. Mr. Chairman: Yes, sir.

Mr. SULZBERGER. Mr. Chairman: My remarks on the previous section are quoted for this. We ought not to submit a question of literary nicety to the people of the state as an amendment to the Constitution. If it does not change the meaning—and it does not—we ought not to enter into such small technicalities.

Mr. ALTER. Mr. Chairman: The committee did not adopt this amendment with any thought of the improvement of the literary

structure of the section, but for this reason: Bills never have been read at length on three different days, nor on any day, and they are not read at length, and they never will be read at length in the practice of the Senate and the House. Of course, "every bill shall be read on three different days" and "every bill read at length on three different days" means pretty much the same thing, and yet when we strike out, if we do, the words "at length," then it would be pretty clear that it was the intention in amending the section to dispense with the requirement that the bill be read at length, and to make it lawful for the legislature to adopt such method of reading a bill, either by its title or in some other way, which, taken together with the fact that each member has a printed copy of the bill upon his desk, would constitute what the legislature should determine or consider to be a reading; but to leave the Constitution stand with the requirement that each bill shall be read at length on three different days, when we know that it is not done, and when we know that it never will be done, that in practice it is almost correct to say that it cannot be done, then we leave the Constitution such that every time the legislature passes a bill, three times in the passage of every bill, the legislature deliberately violates the Constitution of the state, and as we cannot get the legislative practice to harmonize with the constitutional provision the only thing then, in order to avoid that unfortunate situation, is to make the constitutional provision harmonize as nearly as we can with the practice of the legislature; and, therefore, the committee thought wise to suggest this change.

Mr. SULZBERGER. Mr. Chairman: I would like to ask Mr. Alter whether or not that is the only way to interpret that clause. Might it not mean that it shall be read at length by the legislator who has it before him, and has not the legislative practice established that as the true meaning, and has any mischief resulted in the past from the presence of the words "at length?"

Mr. ALTER. Mr. Chairman: I have seen this requirement invoked in this room, and I recall on one occasion when the school code proposed in 1909 was under consideration here in the Senate on second reading, a gentleman on that side of the House, for some purpose desired to obstruct the passage of the bill, and he insisted, under the constitutional provision, that each section must be read at length, and it was ruled that that must be done if any member insisted upon it. Thereupon a motion was made that nine clerks be assigned the task of reading the bill and that each clerk read a different section so that nine clerks might be reading at once, and—

Mr. CARSON. Mr. Chairman: All at the same time?

Mr. ALTER. All at the same time; which was actually done until the Senate decided that they would compromise the situation by putting the bill over for a few days until the differences could be adjusted.

Mr. SULZBERGER. Mr. Chairman: If you cut out the words "at length," if the interpretation be that way, how would you relieve the situation? You can not read it without reading, and if you read it, you read it at length. I think the example cited by the gentleman from Allegheny, Mr. Alter, shows that the Senate, and no doubt the House of Representatives, will, in an emergency, be perfectly competent to deal with the matter without any amendment.

Mr. ALTER. Mr. Chairman: Of course, there is always force in what the Judge says, and I recognize that, and what he says now appeals to my mind. I explained the reason why the committee thought this change should be made.

Mr. CARSON. Mr. Chairman: Was it intended—it gives me some embarrassment, never having had any legislative experience—was that provision, or were these words “read at length” intended to prevent smuggling of bills and hastening their passage through the legislature, and stifling discussion? And, therefore, was it in the nature of a barrier set up, a protection which could be invoked by somebody who found that hurried tactics were being employed to rush legislation through the Senate and House? What was the purpose?

Mr. ALTER. Mr. Chairman: I suppose that was the purpose, very likely. I have not read any debates on the subject.

Mr. CARSON. Mr. Chairman: Then might it not be safe to leave it there as it is?

The CHAIRMAN. There is no motion before the Committee except the motion of the gentleman from Allegheny, Mr. Alter, to adopt the report of the committee. To get Judge Sulzberger's views before the Committee would require a motion of some kind, I suppose, to substitute the section as it is in the Constitution now, for that recommended in the report of the committee.

Mr. PEPPER. Mr. Chairman: I move that section 4 of article III of the Constitution shall stand as it is now, in lieu of the amendment recommended by Committee No. 1.

Mr. SULZBERGER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE 111, SECTION 5.

The CHAIRMAN. The next section in order for consideration is section 5 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 5. No amendment to bills by one House shall be concurred in by the other, except by the vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof; and reports of committees of conference shall be adopted in either House only by the vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting recorded upon the journals.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 5 of article III of the Constitution be adopted.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 6.

The CHAIRMAN. The next section in order for consideration is section 6 of article III of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 6. No law shall be revived, amended or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred, shall be re-enacted, and published at length. Every law creating any general system may be given a short title or designation, and any bill amending or reviving the same may recite only such short title or designation, and the date of the approval of said law.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move the report of Committee No. 1 on section 6 of article III of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. CARSON. Mr. Chairman: Before the vote is taken I want to ask whether that word "conferred" is not a mistake? What do you mean by the "provisions conferred?" If you said "powers conferred" I could understand. "No law shall be revived, amended or the provisions thereof extended or-conferred except by reference to its title only." Is it intended that the word "conferred" shall stand?

Mr. ALTER. Mr. Chairman: That is the language in the present section of the Constitution.

SHORT TITLE FOR BILLS.

Mr. KELLY. Mr. Chairman: The question of the title and the sufficiency of the title of an act of assembly has been passed upon by the supreme court of the state very many times, and the requirements of the present Constitution in the matter of title is now, I think, very well settled; and I think it very well settled that any law creating any general system may be given a short title or designation; so that, so far as that part of the change or amendment suggested by the committee is concerned, it would seem to be unnecessary; in other words, we have a borough code, and the title is "An Act Relating to Boroughs," I think, or practically that language; the school code, that contains forty or fifty pages and many sections and paragraphs, has a short title, such as "An Act Governing the Schools of the Commonwealth;" in other words, it has been decided over and over again that if the title is sufficient to give notice of the general contents of the act, it is sufficient; and, therefore, it seems to me that it is unnecessary now, after that has been settled, to amend the Constitution by using this first part of the last sentence of this section 6, as amended. In other words, "every law creating any general system may be given a short title or designation." If the intention of this amendment is to allow a bill to be amended or revived by merely reciting the title, and without reciting the provisions of the bill, which may be a good thing—I do not have that in mind at this time—it seems to me that we ought to leave out that first part of the second sentence, "every law creating any general system may be given a short title or designation," because it is unnecessary, and I move to amend the report of the committee by omitting those words.

The CHAIRMAN. Is the motion seconded?

Mr. GORDON. Mr. Chairman: I understand the meaning of this change clearly to be that the workmen's compensation act could be amended by referring to it as the workmen's compensation act, without reciting all the long words of the title, leaving the law to stand, however, that if an old law is sought to be revived or any extension of the powers of it, or conferring of powers of it beyond its present directions, that there you cannot refer to the title only, but you must embody the substance of the act which is amended in the new act; but that where a general scheme, such as the workmen's

compensation act or the negotiable instrument act, that there you can amend those by reference to the short title, "the workman's compensation act" or the "the negotiable instrument act," and I think that will promote clarity because the vision may be obscured by the multiplicity of long titles. I fancy that is the reason for that report.

The CHAIRMAN. All the members on the Committee will recall how long the title of the workmen's compensation act is, and it has to be recited every time you attempt to amend it.

Mr. KELLY. Mr. Chairman: Then perhaps I labor under a misunderstanding of the subject-matter of this amendment. Am I to understand that an act of assembly which has a long title cannot be amended by referring to the title only, but that only acts of assembly which have the short and comprehensive titles may be amended by reference to the title only?

Mr. GORDON. Mr. Chairman: No. But long acts creating systems usually are given a short title in the body of the act, so that reference may be made to them by the short title. The corporation act of 1874 is so called in the body of the act, though it has a long title. Now, this is to allow these short titles embodied in the acts to be used instead of the long titles.

Mr. KELLY. Mr. Chairman: So that in amending the act which has not a short title the provision which is to be extended or amended must be recited at length under this proposed amendment?

Mr. GORDON. Mr. Chairman: Oh, yes, there is no change at all on that subject.

Mr. KELLY. Mr. Chairman: I think I have been enlightened and I withdraw my motion.

Mr. FOX. Mr. Chairman: I would like to ask the chairman of Committee No. 1 whether the thought that has just been expressed by Judge Gordon could not be properly incorporated in this amendment; that is, "every law creating any general system may be given a short title in the body of the act," so that there should be no question as to where that short title originates.

Mr. ALTER. Mr. Chairman: I think the suggestion of Judge Fox is a very good one, so as to avoid any possibility of ambiguity on that point.

The CHAIRMAN. Then the amendment is accepted by the chairman of Committee No. 1 and the words "in the body of the act" will be inserted after the word "designation."

Mr. ALTER. Mr. Chairman: Yes, sir.

Mr. REED. Mr. Chairman: I would like to ask whether there is any necessity for such amendment, whether the legislature is not doing that now. They are inserting in the corporation act "This act shall be known as the corporation act of 1874," and if you go to amend it you must recite the provision amended, but you do it by saying "the corporation act of 1874," section so and so "which reads as follows———" "is hereby amended."

The CHAIRMAN. I think that is not the practice, Judge Reed. We have advised in my department that that is not in compliance with the Constitution. We may be wrong in the department that you cannot have the amendment of the act in that way.

Mr. REED. Mr. Chairman: You must recite the portion of the act to be amended, but you can refer to the act, as the legislature has

stated it, "the corporation act of 1874." I think it would be sufficient if you recited at length the provisions you are amending. The present Constitution does not require the title to be specified to that extent.

The CHAIRMAN. This is really a very important matter of legislative draftmanship. I had over eight hundred bills to examine as the result of the last session of the legislature. The matter of legislative draftmanship has come to be of very vital concern to the state, on account of the amount of printing to be done; because, under what I think is a mistaken view, many legislative draftsmen now draft completely the sections of acts which are to be amended, and then repeat them after the clause, "is hereby amended to read as follows," perhaps with the addition of a very few words.

Mr. CARSON. Mr. Chairman: How much does that legislative practice increase the bulk of the pamphlet laws?

The CHAIRMAN. It increases it very much.

Mr. CARSON. Mr. Chairman: It must be increased. It nearly doubles it, I suppose.

Mr. PEPPER. Mr. Chairman: I have been somewhat confused during this debate by what seems to me to have been the discussion simultaneously of two matters which seems to be distinct. As I read the amendment reported by Committee No. 1, I find in it this clause: "Every law creating any general system may be given a short title or designation." Am I right, Mr. Chairman, in understanding that that refers to the giving of a short title or designation to the act at the time of its original passage?

The CHAIRMAN. Yes, sir; that is the Chairman's understanding.

Mr. PEPPER. Mr. Chairman: If that is the correct interpretation of it, may I suggest that so much of the clause reported by the committee as I have just read is really a proper amendment to section 3 and not to section 6? Section 3 reads: "No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title." It seems to me that if we are going to deal with the subject of titles of bills when they are originally enacted, that this is the place where we should add—the provision that "every law creating any general system may be given a short title or designation." If that addition is made to section 3, then it will be unnecessary to make any amendments to section 6, because if under section 3 the short title or designation is permissible it will follow, as a matter of course, that any amending or reviving act may amend or revive the act by referring only to such short title.

If I have failed to understand the question as a matter of legislative procedure, I should like to be enlightened; but it does seem to me that a provision dealing with the title which may be given to a bill when it is originally enacted is a provision which should be incorporated into the section which deals with that subject, which is section 3.

Mr. GORDON. Mr. Chairman: I am not speaking for Committee No. 1. I am not a part of it. I do not understand it to have intended in any way to change that portion of the Constitution which requires all bills to have titles which shall clearly express their subject. That stands and any bill creating a general system would

still have to have a title conformable to the Constitution in its clarity of indication of the subject-matter. But such an act might also have a short title which might be referred to in any subsequent amending statute. Have I correctly understood it?

Mr. ALTER. Mr. Chairman: Yes, sir; that is the reason we put it in section 6 instead of section 3.

Mr. PEPPER. Mr. Chairman: It completely answers, as I thought it would, the suggestion that any change should be made in section 3, but it gives point to the question which I ask next, which is: Why should we in section 6 insert this language: "Every law creating any general system may be given a short title or designation," if we are dealing in section 6 only with what we may do when amending or reviving acts, and not when we are originally passing them?

Mr. FISHER. Mr. Chairman: This goes, as Judge Gordon suggests, not to the substance of the title, but to the question of procedure. Now, it has always been the legislative custom, when a bill has been amended, to quote in full not only the provision which is to be amended, but the title of the act itself which is to be amended. That practice seems to be based on this provision of section 6 which says that "No law shall be revived, amended," and so on, "by reference to its title only;" the inference therefrom being that reference should be made to the title of the bill. If reference is to be made to the title of the bill, of course, it would be correct that it should be quoted in full unless there be constitutional authority otherwise. It has been proposed in the committee to provide another method of referring to the title of the bill when it comes before the legislative body for amendment.

The CHAIRMAN. The Chair has before it the pamphlet laws for 1919, and there are a number of amendments to the state highway act. You will see by examining the pamphlet laws that the title of the state highway act takes two pages—it is recited, and under the Constitution it was conceded that it had to be cited. If the Chair might offer a suggestion—an expert legislative draftsman here has suggested that this requirement should be made mandatory so that all acts of this kind would be required to have short titles, so that every law creating any general system shall be given a short title.

Mr. FISHER. Mr. Chairman: I doubt, with all deference to the gentleman who has made the suggestion—and I think there is nobody more skilled in drafting legislation than he or has had greater experience—I do not believe that it would be wise to make it mandatory. I think the practice itself would take care of that subject. I believe anybody offering a bill for amendment would take advantage of the opportunity of quoting the short title rather than quoting the full title to such disadvantage as has been instanced here in the case of the highway department law.

Mr. FOX. Mr. Chairman: When I made the suggestion a few moments ago that the short title should be incorporated in the body of the act, I simply had in mind the thought that it would be well to fix how that short title should be applied. I think that the suggestion made by Judge Sulzberger is a very good one, and perhaps it would be well to amend this so as to provide that it should be given in the alternative a short title or designation, so that we do not interfere with the other provision of the Constitution requiring the title to express clearly the purpose of the act; and I so move.

The CHAIRMAN. As the Chair understands the amendment, its real purpose is to prevent the recital of these long titles in amending acts, so that they can be amended by short titles. Of course, the best language to express the thought is for the Committee of the Whole.

Mr. PEPPER. Mr. Chairman: I offer the following amendment to the pending resolution: After the words "re-enacted and published at length" substitute what I am about to read for all that follows:

"But every law amending or reviving a law creating any general system may recite only such short title or designation as is descriptive of such general system and the date of the approval of said law."

My purpose, sir, for the amendment, if it is seconded, I should like to state.

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee adopt the amendment?

Mr. PEPPER. Mr. Chairman: My purpose is to get rid of what seems to me to be a misplaced statement in the body of this proposed amendment which is to the effect that, "Every law creating any general system may be given a short title or designation," which, as I understand it, refers to what may be done when the bill is originally enacted, and that is not the subject-matter of this section. This is not the place to confer upon the legislaure, if it is to be conferred, the right to do thus and so when bills are originally enacted. This section is to deal only with what is to be done when bills are to be revived or amended; and I submit that that being the case we should omit the language which, if I am correct, is out of place, and substitute a succinct statement of the real purpose which, as I understand the chairman of the committee has in view, and I think that real purpose is adequately accomplished if the section as a whole shall read as follows:

"No law shall be revived or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length; but every law amending or reviving a law creating any general system may recite only such short title or designation as is descriptive of such general system, and the date of approval of said law."

Mr. GORDON. Mr. Chairman: The objection to that is that it would be in the discretion of the drafter of new legislation to say what should be the brief description of the former law. The purpose of the committee's report is that the law itself shall designate what its brief title shall be, and that, therefore, when it is referred to by the legislature or by the court it may be called by its brief title. Mr. Pepper's amendment would leave it to the person who offers an amendment to a law creating a system to say what he should call a brief title, and it would be for the first time so called. That does not seem to be the purpose of the committee.

Mr. PEPPER. Mr. Chairman: That is, after all, a question of detail, a question of whether you are going to provide that the short title shall be such only as is specified in the act, or whether you are to get at it in some other way. I should defer to what Judge Gordon has just said in that respect. I do not mean to make an issue upon that point, but what I do want, if possible, is to eliminate from

the amendment to section 6, dealing with what the legislature is to do when it amends or revives acts, a declaration as to what is to be done by the legislature when it originally passes them.

Mr. GORDON. Mr. Chairman: May I ask Mr. Pepper whether it would not meet his structural criticism by taking up again section 3 of this act and adding this clause: "Every law creating any general system may be given a short title or designation?"

Mr. PEPPER. Mr. Chairman: Yes, sir; I think so.

Mr. GORDON. Mr. Chairman: And then when considering this section, use that latter part of it?

Mr. PEPPER. Mr. Chairman: Yes, sir; we can.

RECONSIDERATION OF VOTE ON SECTION 3 OF ARTICLE III.

Mr. GORDON. Mr. Chairman: I move that we reconsider the vote by which we adopted the report of the committee on section 3 of article III.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: Now, I move, sir, that section 3 of article III be amended by adding at the end thereof the following words: "But every law creating any general system may be given a short title or designation." Does that cover the thought?

Mr. GORDON. Mr. Chairman: I second the amendment, and I suggest the word "also" be inserted, "be given also a short title or designation;" so as not to be a substitution for the original portion.

Mr. PEPPER. Mr. Chairman: Yes, sir. "But every law creating any general system may be given also a short title or designation."

On the question,

Will the Committee agree to the amendment?

Mr. FOX. Mr. Chairman: I would like to suggest to the gentleman from Philadelphia, Mr. Pepper, that he insert the word "alternative" there so that it shall be clear. The point I have in mind is that we get away from the thought that the legislature may give it a short title and that in the act itself, in some way, this short title should be incorporated, either in the title or body of the act.

Mr. CARSON. Mr. Chairman: I did not quite catch what Judge Fox meant by the word "alternative." The word "also" I can understand. The danger of course, is that this short title which is simply descriptive, like highway act or health act or Bullitt bill, or something of that kind, does not disclose in its name the substance or character of the bill itself, and if you are going to open it to a selection of title which is legitimate, the last section may be adopted as a method to evade the first provision so that your title will disclose no contents at all.

Mr. ALTER. Mr. Chairman: It does seem to me that the amendment properly belongs in section 6, because section 3 relates only to the title under which the bill is passed. The title is put at the head of the bill for the purpose of giving notice of that which is contained in the bill. The amendment under consideration relates only to cases where existing laws are to be amended or extended, and consequently it was in that section that the committee thought appro-

priate to make the provision that in any bill of a general character there might be embodied in the body of the bill a name by which that bill might thereafter be known; that in any amendment or extension of that bill, it might be referred to in such amendment or extension by that short title and not by the full title under which it had been originally passed; and consequently, with deference to the gentleman from Philadelphia, Mr. Pepper, it does seem to my mind that the amendment belongs where the committee suggested putting it and that it will be most logical to leave it in that place.

Mr. PEPPER. Mr. Chairman: I should not venture to press an amendment on a question that dealt with legislative drafting against the views of the gentleman who has just taken his seat. It may be that his view is the right one; at all events, I do not wish further issue should be made of it. I shall be very glad to withdraw the amendment.

On the question recurring,
Will the Committee adopt the report?
It was adopted.

ARTICLE III, SECTION 6.

The CHAIRMAN. We are again on the consideration of section 6, and the question before the Committee is the amendment proposed by Mr. Pepper as a substitute for the report of Committee No. 1. The suggestion was made—I do not know whether by Mr. Pepper—that the title ought to be the title set forth in the original act or something so that—

Mr. PEPPER. Mr. Chairman: The suggestion or motion that I made is this, and I am modifying it as I read it to meet the very proper objection made by Judge Gordon. After the words “re-enacted and published at length” substitute the following for the rest of the amendment reported by the committee:

“But every law amending or reviving a law creating a general system may recite only such short title descriptive of such general system as may have been expressed in such law, together with the date of approval of said law.”

On the question recurring,
Will the Committee agree to the amendment?
It was agreed to.
On the question,
Will the Committee adopt the report as amended?
It was adopted.

ARTICLE III, SECTION 7, CLAUSES 1 TO 20, INCLUSIVE.

The CHAIRMAN: The next subject in order for consideration is section 7 of article III of the Constitution, the report of Committee No. 1 being that clauses 1 to 20, both inclusive, shall stand without amendment.

The Secretary read the section up to and including clause 20, as follows:

Section 7. The general assembly shall not pass any local or special law:
Authorizing the creation, extension or impairing of liens:

Regulating the affairs of counties, cities, townships, wards, boroughs or school districts:

Changing the names of persons or places:

Changing the venue in civil or criminal cases:

Authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys:

Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other state:

Vacating roads, town plats, streets or alleys:

Relating to cemeteries, graveyards, or public grounds not of the state:

Authorizing the adopting or legitimation of children:

Locating or changing county seats, erecting new counties or changing county lines:

Incorporating cities, towns or villages, or changing their charters:

For the opening and conducting of elections, or fixing or changing the place of voting:

Granting divorces:

Erecting new townships or boroughs, changing township lines, borough limits or school districts:

Creating offices, or prescribing powers and duties of officers in counties, cities, boroughs, townships, election or school districts:

Changing the law of descent or succession:

Regulating the practice or jurisdiction of, or changing the rules of evidence in, any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate:

Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables:

Regulating the management of public schools, the building or repairing of school-houses, and the raising of money for such purposes:

Fixing the rate of interest:

On the question,

Will the Committee adopt the report?

The CHAIRMAN. I may say, so that the members of the Committee will see the reason for thus reporting this section, that Committee No. 1 has also reported that clause 21 should be amended so as to read as follows: "Affecting the estates of minors and persons under disability." The report of Committee No. 1 on the first twenty clauses of section 7 of article III is therefore made en bloc.

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on clauses 1 to 20, both inclusive, of section 7 of article III of the Constitution be adopted en bloc.

Mr. GORDON. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

SPECIAL AND LOCAL LEGISLATION.

Mr. CONNELLY. Mr. Chairman: Section 7, on page 22, provides for special and local legislation, and then goes on, on page 23, the second line, "Regulating the affair of counties, cities, townships, wards, boroughs or school districts." Committee No. 5 had this matter up this morning, and we had some doubts as to exactly what that meant in view of the amendment suggested by Committee No. 1 to be known as section 32, that section being as follows:

"Section 32. The legislature shall have power to classify counties, cities, boroughs, school districts and townships according to population, and all laws passed relating to such classes shall be deemed general legislation within the meaning of this Constitution, but counties, cities and school districts shall not be divided into more than seven classes, and boroughs and townships into more than five classes."

What we had in our mind, in a general way, was whether that was somewhat conflicting with section 7 in the sense that the legislature, having the power to classify cities, would have the power to do certain things in relation to those classifications which might infringe upon the provisions of section 7 in relation to special or local laws. For instance, one of the problems that the committee on municipal government is having before it is the theory or classification for the purpose of indebtedness of cities into population, and whether we would at some stage in our procedure run counter to this special and local legislation as affecting counties. I simply call this matter to the attention of the Committee so that we can be guided in our deliberations by exactly what that meaning is. I confess it struck me on reading section 32, as distinguished from section 7, that it was somewhat conflicting. The thought that I had in my mind, if I am correct in that, was whether that section should not be inserted in some way immediately before section 8, in order to clarify the situation, giving the general assembly the right to classify all cities, boroughs, townships, wards or school districts, and then the class into which they are placed.

The CHAIRMAN. Then, as I understand the suggestion of the gentleman from Philadelphia, Mr. Connelly, it would be that section 32 as reported by Committee No. 1 ought to be numbered section 8.

Mr. CONNELLY. Mr. Chairman: That was the suggestion.

Mr. GORDON. Mr. Chairman: That could hardly be in that section because section 8 applies to notification of local laws, and section 32 is the investigation of bribery or corrupt solicitation.

Mr. CONNELLY. Mr. Chairman: What I had in mind was whether section 32 as proposed in the report of Committee No. 1 might not work confusion in connection with section 7.

The CHAIRMAN. The Chair would state for the information of the members that Committee No. 1 recommends in its report that two sections of article III be eliminated and that would make the proposed section take the number 32, which proposed section is found in the printed reports, the Secretary informs me.

It seems to the Chair that this is one of the very important questions that is bound to rise before the Commission.

Mr. CONNELLY. Mr. Chairman: I suggest, because I confess, on reading sections 7 and 32, I am not quite clear as to what they mean; if section 32 intends that the legislature shall have the power to classify, will they have the power to touch certain of the questions of special or local legislation, or is that contradictory in its terms? For instance, you say: "Regulating the affairs of counties, cities, townships, wards, boroughs or school districts," the general assembly shall not pass any local or special law. Then the committee says, in "counties, cities, boroughs, school districts and townships, that the legislature shall have the power to classify according to population, and all laws relating to such classes shall be deemed general legislation within the meaning of this Constitution." Now, is that contradictory in terms? I had some doubt about it and so did my committee.

Mr. REED. Mr. Chairman: Is not the answer to that, that the supreme court and lower courts have held uniformly that the legislature has power to classify, but said you cannot classify into seven classifications the cities, but you can have three? Now, the effect of

this section 32, as proposed, is to increase the number of classifications which will be general legislation.

Mr. CONNELLY. Mr. Chairman: That is clear.

Mr. REED. Mr. Chairman: When you draft an act relating to class No. 7 it is general legislation under this proposed section.

Mr. ALTER. Mr. Chairman: The thought of the committee was just this, and it seemed clear to us that we are not creating any contradiction. The present Constitution prohibits local or special legislation relating to the affairs of counties, cities, townships, wards, boroughs or school districts. Then the supreme court held that from the very nature of the Constitution there would have to be classification, and they said that there could only be three classes of cities, that they would fix that as the limit. Our purpose was merely to make the Constitution complete in itself, without requiring it to be determined by the court how many classes there could be, and therefore we suggested that the Constitution itself prescribe that there might be classification within certain limits. So that it seems that there cannot be any more contradiction between section 7 and this express provision for classification than there was between section 7 and the necessity for classification, which the supreme court has said existed by reason thereof.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE III, SECTION 7, CLAUSE 21.

The CHAIRMAN: The next clause in order for consideration is clause 21 of section 7 of article III of the Constitution, the report of Committee No. 1 being that this clause shall be amended.

The Secretary read the clause as follows:

Affecting the estates of minors or persons under disability.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on clause 21 of section 7 of article III of the Constitution be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 7, CLAUSES 22 TO 28, INCLUSIVE.

The CHAIRMAN. The next subjects in order for consideration are clauses 22 to 28, both inclusive, of section 7 of article III, the report of Committee No. 1 being that these clauses shall stand without amendment.

The Secretary read the clauses as follows:

Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury;

Exempting property from taxation;

Regulating labor, trade, mining or manufacturing;

Creating corporations, or amending, renewing or extending the charters thereof;

Granting to any corporation, association or individual any special or exclusive privilege or immunity, or to any corporation, association or individual the right to lay down a railroad track;

Nor shall the general assembly indirectly enact such special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed:

Nor shall any law be passed granting powers or privileges in any case where the granting of such powers and privileges shall have been provided for by general law, nor where the courts have jurisdiction to grant the same or give the relief asked for.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on clauses 22 to 28, both inclusive, of section 7 of article III of the Constitution be adopted en bloc.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 8.

The CHAIRMAN. The next section in order for consideration is section 8 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 8. No local or special bill shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or the thing to be affected may be situated, which notice shall be at least thirty days prior to the introduction into the general assembly of such bill and in the manner to be provided by law; the evidence of such notice having been published, shall be exhibited in the general assembly, before such act shall be passed.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 8 of article III of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 9.

The CHAIRMAN. The next section in order for consideration is section 9 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 9. The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the general assembly, after their titles have been publicly read immediately before signing; and the fact of signing shall be entered on the journal.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 9 of article III of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 10.

The CHAIRMAN. The next section in order for consideration is section 10 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 10. The general assembly shall prescribe by law the number, duties and compensation of the officers and employes of each House, and no payment shall be made from the State Treasury, or be in any way authorized, to any person, except to an acting officer or employe elected or appointed in pursuance of law.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 10 of article III of the Constitution be adopted.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 11.

The CHAIRMAN. The next section in order for consideration is section 11 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 11. No bill shall be passed giving any extra compensation to any public officer, servant, employe, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim against the commonwealth without previous authority of law.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 11 of article III of the Constitution be adopted.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 12.

The CHAIRMAN. The next section in order for consideration is section 12 of article III of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 12. The printing and binding of the laws, journals, bills, documents and papers of the general assembly and the printing and binding required for the other departments shall be let on contract or done directly by the state in such manner as shall be prescribed by law. All furnishings and fuel for the capitol buildings and all paper and stationery required for the legislative and other departments shall be procured under contract. All contracts comprehended by this section shall be awarded to the lowest responsible bidder under such regulations as shall be prescribed by law, and shall be subject to the approval of the Auditor General and State Treasurer; no member or officer of any department of the government shall be in any way interested in such contracts.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 12 of article III of the Constitution be adopted.

Mr. ENGLISH. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

APPROVAL OF CONTRACTS BY GOVERNOR.

Mr. SULZBERGER. Mr. Chairman: I would like to ask Mr. Alter whether the only substantial amendment involved in this proposition is not the elimination of the Governor from the approval of these contracts.

STATE PRINTING.

Mr. ALTER. Mr. Chairman: The most substantial change in the mind of the committee was that permitting the state, if the legislature saw fit, to do its own printing instead of requiring that that printing shall be let by contract.

APPROVAL OF CONTRACTS BY GOVERNOR.

Mr. SULZBERGER. And then the Governor was eliminated from the approval of the contracts finally?

Mr. ALTER. Yes, sir.

Mr. SULZBERGER. And may I ask what was the dominating thought of the committee in leaving the Governor out?

Mr. ALTER. The thought in that connection was that at present the Governor is required to attach his approval to a large number of contracts which, in the nature of things, he cannot know very much about; at least, it was explained to the committee by a gentleman connected with the executive department of the government that at present the Governor is required to sign his name to a great many such matters without having the proper opportunity to analyze them, and that it is better to relieve him from that responsibility and from taking his time in clerical matters which could better be given to broader questions.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE III, SECTION 13.

The CHAIRMAN. The next section in order for consideration is section 13 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read this section as follows:

Section 13. No law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 13 of article III of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

JUDGES' SALARY INCREASE.

Mr. CARSON. Mr. Chairman: This section, sir, which is embodied in the article on legislation, has proved a very serious weapon of attack on the independence of the judiciary, which is contained in article V. If you look at section 18 of article V, on page 41 of this book, Compilation of Constitutions, you will observe that it reads: "The judges of the supreme court and the judges of the several courts of common pleas, and all other judges required to be learned in the law, shall at stated times receive for their services an adequate compensation, which shall be fixed by law, and paid by the state." That clause comes very largely from the Constitution of

1790 and, in terms, is very close to the Constitution of the United States, except that it is strengthened by the insertion of the word "adequate," which was placed there by Chief Justice McKean, after reading a discussion in *The Federalist* from the pen of Alexander Hamilton. The purpose was to make the judiciary absolutely independent by giving them a living wage and, at the same time, when the value of money changed from period to period, by authorizing the legislature to increase the salaries of judges to enable them to live on their salaries.

The question came before me when I was Attorney General, in the shape of a request for an opinion from the Auditor General, E. B. Hardenbergh, as to whether or not he was authorized to draw a warrant in favor of the judges for the increased amount of salaries which had been established by the act of 1903. I had to consider the question of the constitutionality of that act. I had no doubt whatever that the article relating to the judiciary, in establishing a co-ordinate and independent branch of government, stood entirely free from that objection. Then I was confronted by the argument, which I found running through the opinions of lawyers and of a former Attorney General under Governor Beaver, Attorney General Kirkpatrick, that the words were qualified in their meaning by this very section 13, that "No law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment;" that the words "any public officer" were general and, therefore, equivalent to "all;" "No law shall extend the terms of public officers, or increase or diminish their salaries or emoluments, after their election or appointment;" so judicial salaries cannot be increased.

On considering the matter, I saw that this clause was being misused for the purpose of stabbing, perhaps stabbing fatally, section 18 of the judiciary article by making it impossible to advance the salaries of judges who at that time were living on salaries fixed away back in 1873—and the time I had to consider it was in the year 1904. My construction was that this section in the article on legislation could not possibly apply to judges, for this reason: "No law shall extend the term of any public officer," "no law" meaning, of course, no statute; and, as it was in the article on legislation, it amounted to a limitation of legislative power; and I asked myself the question, How can an act of the legislature extend the term of a judge, when the judge's term is established by the Constitution? Therefore, it was clear to my mind that it could not relate to the judicial office, and that it must necessarily relate to those offices created by act of assembly whose terms, save for this limitation of legislative power, might have been extended. Now, the construction which I gave it has been established by judicial decisions, under very embarrassing circumstances, because it was an embarrassment that the judges themselves had to pass, or apparently had to pass, on a question in which they were pecuniarily interested. Eventually I was able to persuade in the lower courts two judges, the present Justice Von Moschzisker, then a judge of the court of common pleas of Philadelphia, and Judge Bell, sitting in Blair county, to come to Harrisburg, as they were clearly within the terms of the increase act, and had no personal interest in the matter at all. They decided, as I contended, that this section of article III did not apply to judges. When it came on ap-

peal to the supreme court, all of the justices declined to sit with the exception of the only justice who was free from disqualification, Mr. Justice Thompson, and he had no interest in the matter; but he, as the sitting justice, had to wield the entire power of the supreme court. Now, that is a situation which ought not to be repeated. It puts a strain on the judges themselves, and I contend that it is all wrong, and we need to follow the practice which was established, and has been established in the Federal courts since the Constitution of the United States was framed, that from time to time, as living expenses increase, a judge's salary can be advanced. If you do not put that interpretation upon it, the judges are the most helpless of creatures. They would have to live on salaries fixed perhaps twenty-five to thirty years before the stress came upon them. An act to amend the Constitution in favor of a class as small as the judges and as unpopular as the judges would be difficult. Judges are not favorites, because the performance of their duty is such that every time they rule against a man or sentence a man it makes that man an active enemy. They have not the power to protect themselves by adequate legislation and, therefore, that power ought to be entirely open to the legislature, and this clause, it strikes me, can be properly interpreted by limiting it to the offices created by statute in the nature of executive or ministerial offices. Legislative salaries have been increased from time to time; and, therefore, I suggest, and so move, that, instead of adopting the report of the committee, this section be amended to read as follows: "No law shall extend the term of any officer whose term has been fixed by statute." That leaves constitutional officers like judges entirely free from the fear of starvation after their election or appointment. That will make it clear and relieve the Constitution of conflict between two of its provisions.

Mr. ALTER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

COUNTY OFFICERS' SALARY INCREASE.

Mr. GORDON. Mr. Chairman: Before the vote is taken I want to call Mr. Carson's attention to this proposition and suggest whether, in his very well-intended phrase to allow judicial salaries to be increased as the legislature sees fit, he does not also give a like right to increase the salaries of county officers. I read from article XIV of the Constitution: "County officers shall be elected at the municipal elections and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election." You will perceive, therefore, that the term of county officers is fixed just as the term of office of judicial officers is fixed, and in letting down the bars of benevolence you may possibly open the flood-gates of extravagance; and I commend this to your consideration over night. It probably has escaped your observation.

Mr. CARSON. Mr. Chairman: I am very glad to accept the suggestion. Would it put county officers in such a position that they cannot be grouped by the committee? I want to preserve the inde-

pendence of the judiciary and to make it possible for judges to receive such salaries as they can live on.

Mr. GORDON. Mr. Chairman: I should like to guard their independence if I could but not by making them a possible subject of legislative favor. But still, all I want to call attention to now is that by your amendment you have allowed county officers to have their salaries increased during their term of office, because their term of office is constitutional as well.

Mr. CARSON. Mr. Chairman: We will attend to that when we reach that section.

On the question recurring,

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE III, SECTION 14.

The CHAIRMAN. The next section in order for consideration is section 14 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 14. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 14 of article III of the Constitution be adopted.

Mr. ENGLISH. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

BUDGET SYSTEM.

Mr. PINCHOT. Mr. Chairman: I would like to raise the question whether section 14, as it stands, does not prevent the adoption of the budget system by the state of Pennsylvania, "All bills for raising revenue shall originate in the House of Representatives." The budget, as I understand, originates with the executive.

The CHAIRMAN. Is not a budget a bill of expenditure and not to raise revenue? I am not informed.

Mr. PINCHOT. Mr. Chairman: The budget is both, if you please. It covers both sources of raising revenue, in the usual practice, and ways of expending revenue. My impression would be that this clause as it stands would prevent this adoption of the budget system which I think it is desirable.

The CHAIRMAN. Is not this the provision also of the Constitution of the United States?

Mr. PINCHOT. Mr. Chairman: I do not know.

The CHAIRMAN. My recollection is that it is. I have not looked it up for some time.

Mr. ENGLISH. Mr. Chairman: May I call Mr. Pinchot's attention to the corresponding provision in the Federal Constitution, which provides in section 7 "All bills for raising revenue shall originate in the House of Representatives; but the Senate can propose or concur with amendments as on other bills." The language seems to be almost identical with that in our own Constitution.

Mr. PINCHOT. Mr. Chairman: The answer is, the United States government has no budget. What I ask is, whether this does not prevent a budget. Not being a lawyer, I am not sure. It sounds to me as if it did.

Mr. FOX. Mr. Chairman: It seems to me that this is not a serious objection. Suppose the legislature should determine that we should adopt a budget system in Pennsylvania. It still would require the appropriation of money by the state and this provision of the Constitution would still apply; but these bills providing for the appropriation of money must first originate in the House. It does not seem to me that there is any inhibition against the adoption of the budget system.

Mr. ENGLISH. Mr. Chairman: I refer to the Federal Constitution as having a section almost identical with our own because it seems to me I recall reading that the intention of the provision in the Federal Constitution was to insure that purely revenue measures originate in the popular branch of the Federal government and undoubtedly there was some such underlying thought behind the corresponding section in our own Constitution. I do not know how it impresses the other lawyers on the Commission but it seems to me there is nothing in this section which would in any way interfere with the legislature, as a purely legislative procedure, adopting and applying to the finances of Pennsylvania a budget system.

Mr. PEPPER. Mr. Chairman: It seems to me that the point just made must be sound because the subject-matter of the section is a bill, and a bill must originate either in the House or Senate. It is a legislative procedure, and this section merely specifies, as between the Senate and House, that a certain class must originate in the House. It seems to me that it really has nothing to do with the functions of the executive in formulating and submitting for consideration by the legislature such budget as he may determine.

Mr. THORPE. Mr. Chairman: When that clause was put in the Constitution of the United States it was based upon the practice of the House of Commons. There was no budget in England and therefore not in the minds of the framers. A budget has nothing to do with a bill. A bill can be made in either House. You get a budget prepared by another course.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE III, SECTION 15.

The CHAIRMAN. The next section in order for consideration is section 15 of article III of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 15. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the commonwealth, interest on the public debt and for the public schools; appropriations to penal, charitable and educational institutions may be made in one or more bills as the legislature shall determine. All other appropriations shall be made by separate bills, each embracing but one subject.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 15 of article III of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and reported progress.

ADJOURNMENT.

Mr. FISHER. Mr. Chairman: I move that the Commission adjourn until tomorrow morning at 10 o'clock.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 5 o'clock P. M., the Commission adjourned until 10 o'clock tomorrow morning.

Senate Chamber,
Thursday, December 18, 1919.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.
The roll was called by the Secretary and was as follows:

PRESENT—18.

Alter, Carson, Connelly, Fisher, Fox, Gordon, Kelly, Miller, Munce, Pepper, Perrine, Pinchot, Reed, Stackpole, Sulzberger, Thorpe, Warburton, Schaffer (Chairman).

ABSENT—7.

Cuyler, English, Palmer, Sharpless, Smith, Tyson, Wilson.

The CHAIRMAN. A quorum of the Commission being present, the Commission will proceed with its business.

JOURNAL APPROVED.

Mrs. WARBURTON. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mrs. MILLER. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. Has any member of the Commission anything to offer at this time?

COMMITTEE OF THE WHOLE REPORT.

Mr. GORDON. Mr. Chairman: I offer the following resolution and move its adoption.

The Secretary read the resolution as follows:

Resolved, That no report of the Committee of the Whole on the report of any sub-committee shall be made to the Commission until the reports of all the sub-committees shall have been made and considered by the Committee of the Whole.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

PUBLIC HEARINGS.

The CHAIRMAN. The suggestion has been made that the Chair shall make a statement at this time, and if the gentlemen of the "third house" think it is news, the Commission will appreciate their making a note of it.

In order to answer the many inquiries which have been received, I desire to state that the work of the Commission at this stage of its proceedings is entirely tentative. After the Commission shall have completed its study and tentative revision of the Constitution, in

accordance with the provisions of the act of assembly creating it, opportunity will be given to every one who desires to be heard to present his or her views to the Commission before any final action is taken. After these hearings the Commission will proceed to put its work into final form, in the light of the full information which it will receive from the hearings which it will hold.

The Chair has received a great many inquiries asking for the opportunity to be heard before the Commission. The Chair understands the desire to be that public hearings shall not be held until the Commission has completed its own study and revision, and in order that the public may know that this is the situation it has been deemed wise that the Chair should make this statement.

LAST ARTICLE OF CONSTITUTION.

In assigning the different articles of the Constitution to various committees, one of the amendments to the Constitution was not assigned. It is an amendment that you will find at the end of the Constitution which was not given a number by the legislature in submitting it to the people, and for that reason it was impossible for the Chair to assign that particular article, which has to do with the registration of land titles, providing a system of registering, transferring, insuring and guaranteeing land titles. The Chair assigns that article of the Constitution to Committee No. 1.

Has any other member of the Commission anything to offer at this time?

TIME OF NEXT MEETING.

Mr. FOX. Mr. Chairman: I move that when we adjourn today we adjourn to meet on January sixth at twelve o'clock noon, with the understanding that we remain in session January sixth, seventh and eighth.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

TIME OF ADJOURNMENT.

Mr. ALTER. Mr. Chairman: I move that unless the work of the day be completed at an earlier hour, adjournment today be at three o'clock. It is necessary for those of us who go to the western part of the state to know what time we are going in order that we may get our reservations. The last train which will get us home at any comfortable time tonight leaves at three forty-five o'clock this afternoon.

Mr. KELLY. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. SULZBERGER. Mr. Chairman: Would it not be better to adjourn at one o'clock definitely, or at half-past one o'clock, and have no recess for lunch? They could then have their reservations more comfortably made, and you would have just as long a session.

Mr. ALTER. Mr. Chairman: That would be entirely satisfactory to Judge Kelly and myself, and I accept that as an amendment.

On the question,

Will the Committee agree to the motion as amended?

It was agreed to.

The CHAIRMAN. Unless there is some suggestion from some member of the Commission, we will proceed with yesterday's unfinished calendar.

COMMITTEE OF THE WHOLE.

The Commission then resolved into the Committee of the Whole, William I. Schaffer, Chairman.

ARTICLE III, SECTION 16.

The CHAIRMAN. The next section in order for consideration is section 16 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 16. No money shall be paid out of the treasury, except upon appropriations made by law, and on warrant by the proper officer in pursuance thereof.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 16 of article III of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 17.

The CHAIRMAN. The next section in order for consideration is section 17 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 17. No appropriation shall be made to any charitable or educational institution not under the absolute control of the commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the state, except by a vote of two-thirds of all the members elected to each House.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 17 of article III of the Constitution be adopted.

Mr. FOX. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

SECTION POSTPONED.

Mr. PEPPER. Mr. Chairman: I should like to ask the consent of the chairman of Committee No. 1 to allow action on this section to be postponed. The subject-matter of this section is closely related to the subject-matter of the ensuing section 18, and at the proper time I shall ask leave to offer a resolution which will be a proposed substitute for both sections 17 and 18; and if it is agreeable to the chairman of Committee No. 1, it seems to me it would keep the record straight if no action is taken on section 17 now.

I therefore move, Mr. Chairman, to postpone action for the present on section 17 of article III of the Constitution.

Mr. STACKPOLE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 18.

The CHAIRMAN. The next section in order for consideration is section 18 of article III of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 18. No appropriation shall be made for charitable, educational, or benevolent purposes to any person or community, nor to any institution, corporation or association in which there is denominational or sectarian instruction given, or which is not open for the admission of any persons without distinction as to denomination or sectarian beliefs. This section shall not prohibit appropriations for pensions or gratuities for military services, for the retirement of judges and employes of the state or state institutions or for the retirement of employes of the public school system.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 18 of article III of the Constitution be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. PEPPER. Mr. Chairman: If it is in order, I should like to offer the following amendment as a substitute for the present section 17 of the Constitution and for the proposed amendment as reported by Committee No. 1, the new section to be numbered "Section 17," if adopted, and the subsequent sections to be numbered accordingly:

"Section 17. Appropriations for charitable, educational or benevolent purposes may be made to a corporation or association not under the control of the commonwealth, but engaged in work or service deemed by the general assembly to be for the public good; provided, that such work or service conforms to standards of excellence prescribed by the general law or by an executive agency established by general law; and provided further, that the benefits of such work or service are in no way dependent upon religious belief or denominational connection; and provided further, that every such appropriation shall be made by a vote of two-thirds of the members elected to each House. No such appropriation shall be made to any person or community; but this prohibition shall not affect appropriations for pensions or rewards for military service or for the retirement of judges or of employes of the state, of a state institution or of the public school system."

I move the adoption of this amendment as a substitute for the report of Committee No. 1 as to sections 17 and 18 of article III.

Mrs. MILLER, Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

MOTION TO RE-REFER SECTIONS 17 AND 18 OF ARTICLE III.

Mr. GORDON. Mr. Chairman: I move that the Committee of the Whole recommends that the sections under consideration, together with the proposed amendments of the gentleman from Philadelphia, Mr. Pepper, be referred back to Committee No. 1 for further consideration.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 19.

The CHAIRMAN. The next section in order for consideration is section 19 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 19. The general assembly may make appropriations of money to institutions wherein the widows of soldiers are supported or assisted, or the orphans of soldiers are maintained and educated; but such appropriation shall be applied exclusively to the support of such widows and orphans.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 19 of article III of the Constitution be adopted.

Mrs. Warburton. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 20.

The CHAIRMAN. The next section in order for consideration is section 20 of article III of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

The general assembly shall not delegate to any special commission, private corporation or association any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes to perform any municipal functions whatever; but the foregoing provisions of this section shall not prohibit the passage of laws authorizing municipalities as a class to create commissions to act in an advisory capacity, or the passage of laws creating commissions with general jurisdiction over all municipalities.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 20 of article III of the Constitution be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

CARNEGIE LIBRARIES.

Mr. REED. Mr. Chairman: I would like to ask a question, whether that affects such a state of affairs as we have in Pittsburgh, as the Carnegie library, which is a building erected by private donation by Mr. Carnegie and largely supported by his funds, operated by a board of trustees, the city making certain appropriations for maintenance and having certain representatives on the board. Can you enlighten me on that, Mr. Alter? I would not think anybody would want to see that disturbed.

Mr. ALTER. Mr. Chairman: I do not think the amendment would disturb it if it is not interfered with by the section as it stands now.

Mr. REED. Mr. Chairman: It is not considered as being interfered with.

Mr. ALTER. Mr. Chairman: No; and the purpose of the amendment is to broaden the opportunity for aid to be rendered to municipalities by commissions, not to narrow it.

Mr. REED. Mr. Chairman: I was not sure, but thought that the broadening of it narrowed it. You say: "Nothing shall prohibit the passage of laws authorizing municipalities as a class to create commissions to act in an advisory capacity." That would seem plain that they could not be created to act in any active way so as to be subject to supervision.

Mr. SULZBERGER. Mr. Chairman: Is not the Carnegie library a trust fund?

Mr. REED. Mr. Chairman: No, sir; not exactly. The Carnegie library was built by donations on property owned by the city and by agreement between Mr. Carnegie and the city of Pittsburgh. He agreed to build and equip this library upon condition that the city accept it by ordinance, that there should be a board of eighteen trustees, nine of whom should be his nominees, for perpetual service and succession, and the other nine to be members of the city government. That arrangement has worked out most satisfactorily and so much to his satisfaction that he subsequently contributed about twenty-seven million dollars to build additions to the building and build a technical school. Now he has left the bulk of his fortune to what is known as the Carnegie Corporation, which shows indications of further helping those institutions. I would not like to see that interfered with in any way, and I only ask that for information.

MOTION TO POSTPONE.

Mr. ALTER. Mr. Chairman: I move that further consideration of this section be postponed in order that we may give thought to the suggestion of Judge Reed, which seems to be important to the situation.

Mr. FOX. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

BOARD OF CITY TRUSTS.

Mr. SULZBERGER. Mr. Chairman: I would like to ask the gentleman from Allegheny also, in that connection, to consider the case of the board of city trusts of Philadelphia, in regard to the Girard estate.

ART COMMISSIONS.

The CHAIRMAN. Permit the Chair to make a statement before putting the question.

The amendment to this section had its origin in the desire to keep free from challenge commissions like the State Art Commission and the city art commissions, the constitutionality of whose existence has

been somewhat mooted; in fact, I argued a case quite recently before the superior court in which this section of the Constitution, as it stands, was invoked as prohibiting the existence of the Public Service Commission, and it is to put those questions beyond cavil that the amendment was suggested.

CARNEGIE LIBRARY.

Mr. FOX. Mr. Chairman: I would like to say that the conditions which exist in Pittsburgh, and probably duplicated in a large number of cities in the state, are somewhat analogous to the situation at least in Easton; for instance, Mr. Carnegie gave a library on the same basis, and there is now a board of trustees to supervise the library, and the appropriation is made, I think, from the school funds of the city; so that I think the whole matter ought to be carefully safeguarded so as not to interfere with such plans.

MOTION TO RE-REFER SECTION 20 OF ARTICLE III.

Mr. CARSON. Mr. Chairman: I move to amend Mr. Alter's motion to postpone action on this section for the present by adding to the motion that the Committee of the Whole recommends that the section be re-referred to the committee for further consideration.

Mr. ALTER. Mr. Chairman: I think that would be just as well and I accept that amendment.

On the question,

Will the Committee agree to the motion as amended?

It was agreed to.

ARTICLE III, SECTION 21.

The CHAIRMAN. The next section in order for consideration is section 21 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 21. The general assembly may enact laws requiring the payment by employers, or employers and employes jointly, of reasonable compensation for injuries to employes arising in the course of their employment, and for occupational diseases of employes, whether or not such injuries or diseases result in death, and regardless of fault of employer or employe, and fixing the basis of ascertainment of such compensation and the maximum and minimum limits thereof; and providing special or general remedies for the collection thereof; but in no other cases shall the general assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property, and in case of death from such injuries, the right of action shall survive, and the general assembly shall prescribe for whose benefit such actions shall be prosecuted. No act shall prescribe any limitations of time within which suits may be brought against corporations for injuries to persons or property, or for other causes, different from those fixed by general laws regulating actions against natural persons, and such acts now existing are avoided. (Amendment of November 2, 1915.)

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 21 of article III of the Constitution be adopted.

Mr. STACKPOLE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 22.

The CHAIRMAN. The next section in order for consideration is section 22 of article III of the Constitution, the report of Committee No. 1 being that this section shall be eliminated and that the subsequent sections shall be renumbered accordingly.

The Secretary read the section as follows:

Section 22. No act of the general assembly shall authorize the investment of trust funds by executors, administrators, guardians or other trustees in the bonds or stock of any private corporation, and such acts now existing are avoided saving investments heretofore made.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 22 of article III of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

INVESTMENT OF TRUST FUNDS.

Mr. REED. Mr. Chairman: If I understand the action of the committee, it strikes out the whole of section 22, and that would permit the legislature to pass special acts authorizing the investment of trust funds in certain corporations securities and corporation stocks. Am I right about that?

Mr. ALTER. Mr. Chairman: Special acts referring to particular corporations?

Mr. REED. Surely; you said special or general, for that matter. Mr. Chairman, I would like to ask the gentleman what the purpose of that was.

Mr. ALTER. It did not occur to the committee, Mr. Chairman, that the legislature might have power to enact special acts with reference to investments, and if it should appear, upon consideration, that such would be the case, of course, there ought to be proper amendment to section 7 to prevent such a special enactment.

Mr. REED. What you do mean by this is that the legislature can pass general laws authorizing investments by trustees in stocks or bonds?

Mr. ALTER. Yes, sir.

Mr. REED. Then, Mr. Chairman, I seriously protest against such an amendment as that. Of course, anybody who has anything to do with trusts or trust companies knows that there is a great deal of difficulty in making safe investments under the present laws, and there should be some broadening of the powers of trustees, or at least a lightening of their responsibilities when they are asked to make investments in corporation bonds for the purpose of getting some income for their estates or trusts; but never should this Constitution permit the investment by a trustee in the stock of any corporation, and the right to invest in bonds should be guarded in some way, either by the authority or supervision of the court or governmental department that has control of the trust supervision of it, or in some other way that may occur to the Committee. I believe that trustees ought to be allowed to invest in bonds of solvent corporations, and yet there is a good deal of danger. I know of some

investments that have been made by some of the very shrewdest investors in corporation bonds which they and everybody else thought perfectly safe, and which today would not sell for fifty cents on the dollar. I do not know how you are going to guard against that altogether, but certainly no trustee ought to be allowed to invest in any corporation stock whatever.

Mr. CARSON. Mr. Chairman: I would like to ask Judge Reed whether in his experience, in stating the difficulties under which trustees labor in making investments, he considers that it is a very frequent feature of carefully drawn wills to confer powers on the trustees to invest in safe, sound and substantial securities, without confining them strictly to what is known in the law as legal investments, and with the further clause that in case of loss the trustees shall not be held responsible except for gross or willful negligence. That is a very frequent provision in our wills in Philadelphia; in fact it is very rare to have such a clause omitted.

Mr. REED. And that has even penetrated to Pittsburgh.

Mr. CARSON. Mr. Chairman: Yes, sir. How far that gives trustees complete elbow room in Pittsburgh, I do not know; but it is considered to go in, a very convenient as well as practicable direction, so that the trustees are not brought to the bar of the orphans' court asking for power. The power is already conferred by the testator who, having confidence in the integrity and good judgment of the trustees nominated in the will, equips them with those special powers. If those powers are lacking and there are funds which would have to be held for the benefit of somebody under disability, like a married woman or a spendthrift for whose protection the trust was created, why then the sanction of the court is expressly invited.

Mr. REED. It would include married women, spendthrifts and lunatics?

Mr. CARSON. It is not my personal inclusion. It is hundreds of years old historically.

Mr. REED. Of course, that is true as to carefully drawn wills; but there are thousands of wills in this state, as everybody knows, and trusts in which that provision does not exist. Trust companies have hundreds of those trusts where they have no power except to buy first mortgage, municipal and government bonds. I say there ought to be some broadening of the provision, and my whole idea was not to buy stocks, and I do not understand my friend to approve of that.

Mr. CARSON. No, sir; I do not.

Mr. ALTER. Mr. Chairman: It certainly was not the thought of the committee to encourage unrestricted investment; and yet the committee had no hesitation in agreeing that this section should be eliminated. It seemed to us that the question is one to be cared for by the legislature and the courts. The legislature has been quite conservative and it has never gone as far as it might have gone under this constitutional provision. Prior to 1917 I think legal investments, as prescribed by act of assembly, were limited to bonds of the United States and bonds of this commonwealth or of any municipality of this commonwealth and mortgages or ground rents within this commonwealth. The commission which drafted the decedents' estate code of 1917 was applied to by various trust companies to broaden the field of lawful investment because trust companies were handi-

capped in their efforts to keep their trust funds invested, and the commission of 1917 recommended, and it was approved by the legislature, that fiduciaries be permitted also to invest in bonds of other states and bonds of the cities or counties of other states and in real estate in Pennsylvania other than ground rents, provided the orphans' court, upon application, should first approve of such investments, and that is the state of the law at the present time. Now, in view of that care which the legislature has continued to exercise, it seemed to us that the legislature and the courts could surely be trusted to discriminate and see to it that fiduciaries were not permitted to make reckless investments; and yet there were so many cases of private corporations whose bonds you and I would much rather have than the bonds perhaps of some of the states of this Union; and over and above all that, it seemed clear to us, and to my mind, that a provision like this ought to be, if anywhere, in an act of assembly, but it has no place in the Constitution.

Mr. REED. Mr. Chairman: Prior to the Constitution of 1873 there were a number of special acts passed authorizing investment in certain bonds and stocks of certain corporations. My friend says I did not make any motion. I would move that section 22 be amended by saying, "No act of the general assembly shall authorize the investment of trust funds by executors, administrators, guardians or other trustees in the stock of any private corporation, and such acts now existing are avoided saving investments heretofore made."

The CHAIRMAN. That would strike out the words "in the bonds or?"

Mr. REED. Yes, sir; the words "in the bonds or."

MOTION TO RE-REFER SECTION 22 OF ARTICLE III.

Mr. FISHER. Mr. Chairman: I would then move that the Committee of the Whole recommends that the section with the amendment suggested by Judge Reed be referred back to the committee for further consideration.

Mr. REED. Mr. Chairman: May I add to that motion this: "That no special acts be passed authorizing the investment by trustees in the bonds of any corporation?"

Mr. SULZBERGER. Mr. Chairman: I think the committee might also inquire into the question whether they think there will be any scarcity of United States bonds within the next twenty-five or thirty years.

Mr. FISHER. Mr. Chairman: I renew my motion that the Committee of the Whole recommends that this matter be referred back to the committee for further consideration and report in the light of the amendment suggested by Judge Reed and the suggestion of Judge Sulzberger.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 23.

The CHAIRMAN. The next section in order for consideration is section 23 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 23. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 23 of article III of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 24.

The CHAIRMAN. The next section in order for consideration is section 24 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 24. No obligation or liability of any railroad or other corporation, held or owned by the commonwealth, shall ever be exchanged, transferred, remitted, postponed or in any way diminished by the general assembly, nor shall such liability or obligation be released, except by payment thereof into the State Treasury.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 24 of article III of the Constitution be adopted.

Mr. PERRINE. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

CORPORATE OBLIGATIONS OWNED BY STATE.

Mr. CARSON. May I ask the chairman of the committee whether the committee gave consideration to the words "shall ever be exchanged?" Suppose one of the corporations in which the commonwealth owns bonds should fall into the hands of a receiver or be in the hands of reorganization trustees and such a plan be adopted, after careful consideration, as to make a feasible working plan for the rehabilitation of the corporation, and that it was proposed, as part of that plan, the new bonds should be issued to the bondholders, with this language, that these obligations should not be exchanged, it would put the commonwealth in a position of disability, so far as acting with the other bondholders is concerned, and perhaps prevent, by an absolute bar, the successful reorganization of the corporation which had fallen into trouble. Some of the old railroad and canal companies, at the time when the policy of the state was to authorize investments of state funds in promoting enterprises like canal and railroads—some of those bonds may still be outstanding; I do not know. I know there has been a matter which came before our courts for consideration regarding the bonds of railroads and the Pennsylvania canal a very short time ago. If the commonwealth finds itself in possession of a large block of bonds with the re-awakening, so to speak, of inter- or intra-state commerce so as to bring canals once more to the front as a convenient means of transportation, the fact that the old bonds cannot be exchanged would seem to me, perhaps to

block a successful reorganization of the moribund company. Now, whether the committee has considered that or not, I do not know. I ask for information.

Mr. ALTER. Mr. Chairman: The committee did not consider any suggestion such as that mentioned by Mr. Carson. As I recall, it was stated to the committee by the Attorney General that the reason for having this section in the Constitution probably had ceased, as the state did not hold any such obligations, and probably never would again; and the only reason the committee did not strike the section out was that we did not see that it would do any harm to leave it in. That is about all the consideration that was given to that section.

Mr. CARSON. Mr. Chairman: That is a different point of view; that is a fact easily ascertained. If, in point of fact, the state owns no such securities as would be menaced by that word "exchange," then, of course, what I said has no application. I am not aware of what the state's holdings are. It did occur to me, in reading in regard to the matter of exchange, that there might be difficulties which it would be well to guard against or avoid as the basis for its occasion.

Mr. PEPPER. Mr. Chairman: I observe that in section 12 of article IX there is so stringent a limitation upon investments into which state funds can be put that it seems to me eminently probable as a matter of fact, that the state owns no such bonds as those Mr. Carson has referred to. The section in question provides that in dealing with the subject of sinking fund and surplus revenues of the state—

Mr. CARSON. I realize that, Mr. Pepper.

Mr. PEPPER. Mr. Chairman: Section 12 of article IX contains the words "shall never be invested in or loaned upon the security of anything, except the bonds of the United States or of this state." So I suggest—

Mr. CARSON. Mr. Chairman: My thought was not regarding investments since the date of the Constitution of 1873, but bonds relating to canals and railroads at the time when it was the fixed policy of the state to promote internal improvements to the utmost limits.

The CHAIRMAN. The Chair's information is—I think that can be verified, and the Chair, if the committee desires, will verify it—that the state has no investments of that kind. This section of the Constitution was passed, so the Chair is informed as a matter of history, in order to guarantee that the state would be paid in cash for the investments of the kinds it had made that Mr. Carson speaks of, all of which have been liquidated. The Secretary can verify the fact, if the Committee desires, that the state has no investments of the kind that would be interfered with under the thought that Mr. Carson has expressed.

Mr. CARSON. That is a satisfactory answer to my question. I made no motion; I simply inquired into the facts.

On the question recurring,

Will the Committee agree to the motion?

Mr. SULZBERGER. Mr. Chairman: That is what I am a little in doubt about, that, in view of the provisions to which the gentleman from Philadelphia, Mr. Pepper, has called attention prohibiting any investments except in United States bonds—whether this is of any use and whether it may not be twisted to be harmful as being a sort of

implied power to invest in something else, as somebody will contend, if he wants the state to take a million of his new enterprise; whether it would not better be eliminated.

The CHAIRMAN. I was on the committee, and that was the thought of the committee, the second thought.

MOTION TO RE-REFER SECTION 24 OF ARTICLE III.

Mr. REED. Mr. Chairman: I move that the Committee of the Whole recommends that it be referred back to the sub-committee for further information.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 25.

The CHAIRMAN. The next section in order for consideration is section 25 of Article III of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 25. When the general assembly shall be convened in special session, the legislation at such special session shall be limited to the subjects designated either in the proclamation of the Governor calling such session, or in communications made by the Governor thereto.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 25 of article III of the Constitution be adopted.

Mr. THORPE. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

LEGISLATION DURING SPECIAL SESSION.

Mr. GORDON. Mr. Chairman: I do not say that I would oppose this amendment; but its effect might as well be stated to the Committee. The policy of the people in adopting the Constitution of 1874 was to limit the sessions of the legislature to two years, and that was upon the belief then current that there was too much legislation and that there should be a hiatus in the law-making power of at least two years; but the Governor was given the power, in cases of emergency, to convene the legislature, but he must state in his proclamation the particular subject-matter as to which he desires their particular and special action in special session. That is the existing law and it meets all the requirements, it seems to me, of the occasion. The effect of this amendment is to allow the Governor to convene the legislature at any time in special session, specifying the purpose of the special session, and then after the legislature is in session to submit to it and make valid thereafter any future legislation and any additional legislation on any subject which he may specify. Is that not a negation of the fundamental idea of biennial sessions and is it not more prudent to confine a special session to the particular matter limited in the call? Is not the door left open really for as frequent sessions as the Governor sees fit to call upon an

unlimited number of subjects to be disclosed from time to time by periodic communications to the special session?

Mr. FISHER. Mr. Chairman: Judge Gordon's interpretation of the amendment, I think, is correct. We all recall the special session that was convened under Governor Pennypacker, and I think the subcommittee had in mind that incident. The first call specified the subjects of legislation. Afterwards the Governor, by subsequent proclamation, specified other subjects of legislation. Those subsequent subjects were acted upon by the special session. You all recall that there was a great deal of public discussion at the time. Now, this section should be clarified so as to limit the legislative action to the subjects specified in the original call, or it should be amended clearly to permit the Governor to specify subjects of legislation in supplemental proclamations.

Mr. REED. Mr. Chairman: Is it not a fact that the courts have passed on that?

Mr. FISHER. Mr. Chairman: I do not know. I do not believe the courts have ever passed upon it.

Mr. CARSON. Mr. Chairman: I do not think it was ever challenged, and Senator Fisher's recollection is correct that there was a special call and certain subjects definitely stated in the call. At the same time other pressing matters came up, the creation of Greater Pittsburgh and the necessity for some immediate revision of our election laws, and matters of that sort, redistricting of the state, which had been attempted to be made in vain, and public opinion was so strongly behind the thought of the Governor that action ought to be taken without further postponement that he did add, in the way of proclamation, not in the way of communication to the legislature, but as a sort of supplemental extension of his proclamation. As far as I am aware, the constitutionality of that supplemental proclamation was never challenged.

Mr. GORDON. Mr. Chairman: May I ask the gentleman whether those supplemental proclamations were not equivalent to added calls to special session?

Mr. CARSON. Mr. Chairman: Yes, sir; I think so.

Mr. GORDON. Mr. Chairman: That is very different. Of course, any Governor can do that without this change.

Mr. CARSON. Mr. Chairman: I am entirely disposed to agree with the position stated by Judge Gordon that if you permit the Governor, after the legislature has been convened in special session, to add such communications as he may daily send them, you may, under the guise of a special session, get into a general legislative program. I think that Judge Reed is right in that.

Mr. GORDON. Mr. Chairman: I move to amend the report of the committee by substituting the section as it now stands in the Constitution.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 26.

The CHAIRMAN. The next section in order for consideration is section 26 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 26. Every order, resolution or vote, to which the concurrence of both Houses may be necessary, except on the question of adjournment, shall be presented to the Governor and before it shall take effect be approved by him, or being disapproved, shall be repassed by two-thirds of both Houses, according to the rules and limitations prescribed in case of a bill.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 26 of article III of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 27.

The CHAIRMAN. The next section in order for consideration is section 27 of article III of the Constitution, the report of Committee No. 1 being that this section shall be eliminated and the subsequent sections renumbered accordingly.

The Secretary read the section as follows:

Section 27. No state office shall be continued or created for the inspection or measuring of any merchandise, manufacture or commodity, but any county or municipality may appoint such officers when authorized by law.

On the question.

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 27 of article III of the Constitution be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

STATE INSPECTION OF MERCHANDISE PROHIBITED.

Mr. CARSON. Mr. Chairman: May I ask the Chair whether the existing section has been found, in the practice of the Attorney General's department, to create embarrassment in the matter of dairy and food inspection?

The CHAIRMAN. It does. The present section creates great embarrassment in carrying out proper inspection laws that the state should have.

Mr. CARSON. Mr. Chairman: That was my experience, and I think the report of the committee should be adopted. We found it very difficult, indeed, to work under it as it is.

The CHAIRMAN. Every ingenuity is required to draft acts of assembly which do not come in conflict with that provision.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE III, SECTION 28.

The CHAIRMAN. The next section in order for consideration is section 28 of article III of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 28. No law changing the location of the capital of the state shall be valid until the same shall have been submitted to the qualified electors of the commonwealth at a general election and ratified and approved by them.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 28 of article III of the Constitution be adopted.

Mr. PERRINE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTIONS 29, 30, 31, 32 AND 33.

Mr. FOX. Mr. Chairman: It occurs to me that all of the following sections 29, 30, 31, 32 and 33 are unobjectionable, and perhaps we can save time by passing them all together.

The CHAIRMAN. The next sections in order for consideration are sections 29, 30, 31, 32 and 33 of article III of the Constitution, the report of Committee No. 1 being that these sections shall stand without amendment.

The Secretary read the sections as follows:

Section 29. A member of the general assembly who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation or person, any money, office, appointment, employment, testimonial, reward, thing of value or enjoyment, or of personal advantage, or promise thereof, for his vote or official influence, or for withholding the same, or with an understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit or demand any such money or other advantage, matter or thing aforesaid for another, as the consideration of his vote or official influence, or for withholding the same, or shall give or withhold his vote or influence in consideration of payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery within the meaning of this Constitution, and shall incur the disabilities provided thereby for said offense, and such additional punishment as is or shall be provided by law.

Section 30. Any person who shall, directly or indirectly, offer, give or promise, any money, or thing of value, testimonial, privilege, or personal advantage, to any executive or judicial officer, or member of the general assembly, to influence him in the performance of any of his public or official duties, shall be guilty of bribery and be punished in such manner as shall be provided by law.

Section 31. The offense of corrupt solicitation of members of the general assembly or of public officers of the state or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law and shall be punished by fine and imprisonment.

Section 32. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or practices of solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony, and any person convicted of either of the offenses aforesaid shall, as part of the punishment therefor, be disqualified from holding any office or position of honor, trust or profit in this commonwealth.

Section 33. A member who has a personal or private interest in any measure or bill proposed or pending before the general assembly shall disclose the fact to the House of which he is a member, and shall not vote thereon.

On the question,

Will the Committee adopt the report?

Mr. FOX. Mr. Chairman: I move that the report of the Committee on these sections be adopted.

Mr. ALTER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

The CHAIRMAN. Before putting the question the Chair will wait until the members of the Committee have had an opportunity to look at all the sections.

The Chair understands that the members of the Committee have familiarized themselves by reading the sections now under consideration and the motion, therefore, will be put.

Mr. FISHER. Mr. Chairman: It is understood, of course, that the numbers of these sections have been changed by the report of the committee.

The CHAIRMAN. It is so understood.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE III, PROPOSED NEW SECTION.

The CHAIRMAN. The report of Committee No. 1 contains the further recommendation that article III should be further amended by adding thereto the following section as the last section and numbered according to the foregoing eliminations.

The Secretary read the proposed section as follows:

Section (New). The legislature shall have power to classify counties, cities, boroughs, school districts and townships according to population, and all laws passed relating to such classes shall be deemed general legislation within the meaning of this Constitution, but counties, cities and school districts shall not be divided into more than seven classes, and boroughs and townships into more than five classes.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 as to this proposed section be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

CLASSIFICATION.

Mr. PEPPER. Mr. Chairman: May I ask the chairman of Committee No. 1 whether there is any possibility that the second clause of this proposed amendment might be mischievous, as it is here expressed, "and all laws passed relating to such classes shall be deemed general legislation within the meaning of this Constitution?" I take it that the purpose of the committee is to provide that general laws may be passed and that laws shall not be deemed to be special legislation if they have regard to the classification that is here established; but there might be vicious special legislation, although the law was one passed in relation to these classes; in other words, the mere fact that the law relates to such classes as are specified does not of itself, it seems to me, prevent it from being possibly a vicious piece of special legislation. On the other hand, it is highly important that a law which is general should be so held and not regarded as special because it conforms to these classifications. I just wanted to ask whether the language as here specified is not too broad, "and all laws passed relating to such classes shall be deemed general legislation within the meaning of this Constitution."

Mr. ALTER. Mr. Chairman: My own personal thought is that there is probably some danger in that language, as Mr. Pepper suggests. The classification must be permitted for certain reasons which are perfectly obvious; and yet there might be legislation passed to apply to only one class of cities, which legislation, in its nature, would not be such as would be appropriate to apply to one class and

not to others. My own personal feeling, Mr. Chairman, is that the section would be quite appropriate to the purpose the committee had in mind if the clause to which Mr. Pepper has called attention were amended.

Mr. SULZBERGER. Mr. Chairman: In addition to the suggestion of Mr. Pepper, the committee, I think, might consider what is a class. An ingenious legislature might think of a class as one.

MOTION TO RE-REFER NEW SECTION OF ARTICLE III.

Mr. PEPPER. Mr. Chairman: My understanding, sir, is that the motion I am now about to make is agreeable to the chairman of Committee No. 1, and with that understanding I move that the Committee of the Whole recommends that the section under consideration be referred back to Committee No. 1 for further consideration and report.

Mr. SULZBERGER. Mr. Chairman: I second the motion.
The motion was agreed to.

The CHAIRMAN. That completes the consideration of the report of Committee No. 1 as to article III, and the next business before the Committee is the consideration of the report of Committee No. 1 as to article IV.

ARTICLE IV, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article IV of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 1. The executive department of this commonwealth shall consist of a Governor, Lieutenant Governor, Secretary of the Commonwealth, Attorney General, Auditor General, State Treasurer, Secretary of Internal Affairs, Superintendent of Public Instruction, and the heads of such state departments as may exist from time to time by legislative enactment.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 1 of article IV of the Constitution be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

EXECUTIVE DEPARTMENT.

Mr. REED. Mr. Chairman: I again arise for instruction. Is the Public Service Commission part of the executive department?

The CHAIRMAN. It is administrative and has been held by the court to be an administrative tribunal.

Mr. REED. Mr. Chairman: What department does it belong to? The reason I ask is that you say there "and the heads of such state departments as may exist from time to time by legislative enactment." If the Public Service Commission is a part of the executive department then, I suppose, only the chairman of the Public Service Commission would come in under that division and not the full commission. I am asking for instruction.

The CHAIRMAN. That would be the Chair's understanding. The Chair will state what in his understanding as to the history of this particular section. I do not say this is right, but our information was that at the time of the adoption of the Constitution of 1874, really the only department of state which was recognized as being a separate department was the department of education, which was put in as a constitutional department and the head as a constitutional officer. None of the other heads of departments were recognized as constitutional officers because they were not enumerated in the Constitution.

Mr. CARSON. Mr. Chairman: The suggestion of the committee as expressed in this additional language would make these various heads of departments, as established by the legislature, constitutional officers so as to imbed them in the Constitution, and thereby casting the whole state government into an unchangeable mold except by further amendment. If so, you might get your framework into such a rigid form that, without an idea of some sort of legislative modification, the officers might claim, under the language, that they, as constitutional officers, could not be gotten rid of, could not be interfered with.

The CHAIRMAN. That is worthy of consideration.

Mr. ALTER. Mr. Chairman: The committee had that thought in mind. It was first suggested in the committee that instead of adding here by name the departments which have been created since the present Constitution—because others may be created hereafter by acts of assembly—that we add to the language of the present Constitution such state departments as have been or may hereafter be created by legislation; and it at once occurred to us that thereupon the ones which now have been created, and others which may be created hereafter, from the time of their creation, would be imbedded, so to speak, in the Constitution, and could not thereafter be interfered with. Therefore, we adopted this language, feeling that it would be applicable to such state departments as may exist from time to time by legislative enactment; and we thought, under the language, the legislature would have power to create and to abolish, and it would be only while the office existed under legislative enactment that it would be recognized under this section of the Constitution.

Mr. GORDON. Mr. Chairman: I think that is in accordance with the Constitution in other respects. The judiciary department is established and it is stated what shall be the jurisdiction of the courts of common pleas and other courts, and that they constitute the judiciary department of the government, and such other courts as may from time to time be established by law. Now, there have been other courts established by law, but they do not become constitutional courts and may be abolished by the power that created them. We have had that under consideration in our own committee, Mr. Attorney General.

Mr. CARSON. Mr. Chairman: Yes, as to the judiciary department; but run your eye through Smull's Handbook and consider what a long list of state officers, heads of departments, you are reading into this—mines, agriculture, schools, forestry, railroads, and so on. You might go on indefinitely and you get a long chain of officers standing on the dignified position, "We are constitutional officers and

we cannot be touched;" and in regard even to some of these high offices which are named in the old Constitution it is a very difficult thing to enforce a ministerial duty even when you resort to mandamus, the officer taking the position that he is a constitutional officer and is not subject to the process of the court, that he is not a mere ministerial officer, that he has discretion beyond the reach of judicial control; and this proved to us several times a very serious embarrassment. I do not know how it is at present in the Attorney General's office, but we had trouble.

Mr. FISHER. Mr. Chairman: It seems to me that this matter is perfectly clear. Under the amendment the heads of departments will be creatures of the legislature. The office or the department itself is not a constitutional creation, but is simply a creature of legislative enactment, and if the legislature can create a new department, has authority to do so, it may at any time abolish that department, and, of course, the head of the department falls with it. It seems to me—

Mr. REED. Mr. Chairman: So long as he is in that position is he a constitutional officer and subject—

Mr. FISHER. Mr. Chairman: Yes. There is a very good reason for specially naming the head of the department of education. The thought is to put that department beyond the reach of political control, and when the superintendent goes in he is fixed for four years and cannot be removed except for cause; but this prohibition, this protection, is not thrown around the head of any other department, and, with all due respect to Mr. Carson, it seems to me that we are perfectly safe in adopting the clause as it comes from the committee.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE IV, SECTION 2.

The CHAIRMAN. The next section in order for consideration is section 2 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 2. The supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed; he shall be chosen on the day of the general election, by the qualified electors of the commonwealth, at the places where they shall vote for representatives. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the president of the Senate, who shall open and publish them in the presence of the members of both Houses of the general assembly. The person having the highest number of votes shall be Governor, but if two or more be equal and highest in votes, one of them shall be chosen Governor by the joint vote of the members of both Houses. Contested elections shall be determined by a committee, to be selected from both Houses of the general assembly, and formed and regulated in such manner as shall be directed by law.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 2 of article IV of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of article IV of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 3. The Governor shall hold his office during four years from the third Tuesday in January next ensuing his election.

On the question,

Will the Committee adopt the report?

GOVERNOR'S TERM.

Mr. REED. Mr. Chairman: May I ask the chairman of Committee No. 1 what the purpose was in striking out the rest of the provisions of the present section?

Mr. ALTER. Mr. Chairman: The purpose of the committee was to bring before the Commission the question of whether it would be well to permit the Governor to be eligible to succeed himself. The provision which prevents his being elected to succeed himself is found for the first time in the Constitution of 1873. There was no provision on the subject in the Constitution of 1776. The Constitution of 1790 provided that the Governor's term of office should be three years and that he should not hold office more than nine years in any period of twelve years. The Constitution of 1838 provided that his term should be three years and that he should not hold the office more than six years in any period of nine years. Then comes the Constitution of 1873 and provides that the term of office shall be four years and that he should not be eligible to succeed himself. A very decided majority of the states of the Union permit the Governor to be elected to succeed himself. I know that is not a specially strong argument because quite a number of states are hardly to be taken as guides; but even the states which have the long term of four years, the majority of those states, permit the Governor to be elected to succeed himself. Our neighbor on the east, New Jersey, permits him to be re-elected; likewise our neighbor on the north, New York; and our neighbor on the west, Ohio. I do not know as to our neighbors on the south. I have not looked as to them. It seems to me that this provision in the Constitution of 1873 is in harmony with that indication of distrust and jealousy of public officials which is met with at various places in the Constitution of 1873, and which, personally, I do not feel to be commendable.

It has been suggested that if the Governor is permitted to succeed himself, he may be tempted to try to erect a political machine, a political organization. I do not think that is anything which need give us any serious apprehension. We have had political organizations in Pennsylvania and our liberties still survive, and we still consider ourselves the leading state in the Union; and especially now that the nominations of the different parties for the offices to be filled are not made by delegates, so that there is not now, as there was at the time of the adoption of the Constitution of 1873, the opportunity to manipulate delegates through the appointees of the executive. Now, the nominations come direct from the hearts of the people, pure and uncontaminated and untrammelled. Why then should we say that if the people desire to renominate and re-elect the man whom they have tried and tested, and whose work they approve, they should not

have the right to do so? We say by this provision in the Constitution that the man whom they have tested and whom they know something about, and therefore desire to have for their Governor, is the one man in the state whom they shall not have.

These are some of the thoughts that have suggested themselves to my mind as one of the committee, and some of the things which were mentioned in the discussions of the committee, and all of which we submit for the consideration of the Commission.

Mr. SULZBERGER. Mr. Chairman: I would like to ask the gentleman whether the committee considered that the logical step to effect this purpose was to abandon the position of all the old Constitutions and to remove all restrictions so that the Governor may not only succeed himself once, but may—I think some of the gentlemen in the first United States convention intimated that the President may go on forever and make a king of himself. There is absolutely no limitation in your amendment, is there?

Mr. ALTER. Mr. Chairman: No, sir. The committee, I think, felt that the suggestion to come from them to the Commission should be a suggestion as to a change in the general policy. As to whether specific, general, detailed provisions might wisely be applied in lieu of those now in existence would be a matter for further consideration after we had ascertained that the Commission would consider it desirable to make any change whatever and depart from the present rigid provision.

Mr. GORDON. Mr. Chairman: I move to amend the report of Committee No. 1 by providing that section 3 of article IV remain as it is at present without amendment.

Mr. PINCHOT. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. GORDON. Mr. Chairman: As pointed out by Mr. Alter, the first Constitution put a limitation upon gubernatorial succession and provided that the Governor should not continue in office more than nine years out of twelve years. The next Constitution provided that he should not hold the office for more than six years out of nine years. The term was three years at that time. The Constitution under which we are acting proceeded further, a second step in the limitation, by increasing the term to four years, and providing that the Governor should not be eligible for re-election to the next succeeding term. In doing that, the only limitation put upon the executive was the next succeeding term. The executive may hold office for twelve years, or sixteen years, or twenty years; but he cannot hold office one term after another. That is all that the present Constitution limits and in doing that it put the real and right limitation upon the executive. It was intended that the executive should not have it in his power, by the exercise of his patronage or any other potent official influence, to re-elect himself, and it left him, therefore, so far as any future honors in the executive office are concerned, to the next succeeding term beyond the second term, where all the reflected glories of his executive administration might then perform their due and proper work.

But, Mr. Chairman, the tendency of the age is decidedly against allowing the executive officers, with large patronage, to hold the office for a succeeding term. Mr. Alter says that our neighboring states,

some of them, allow that. I would suggest to him that all of them have briefer terms than ours. New Jersey, I think, is two years. New York has less than four years; I think that also is two years. But we made it four years, and put this limitation upon it.

Now, may it please the Chair, when the charter for Philadelphia, the Bullitt bill, was enacted, the term of the mayor was increased, and his powers and patronage vastly increased; but there was immediately a limitation put upon that office, that he should not be eligible to re-election. The last legislature passed a new charter for Philadelphia, continuing the mayor's term at four years, and gave him additional patronage, but contained the provision that he should not be eligible for re-election to the next term.

And in national affairs that is also the trend of public thought. There is no limitation in the Constitution of the United States upon the power of the President to succeed himself as often as he may succeed in having himself re-elected; but the people and parties put the limitation upon it in public sentiment, and limited it to two terms. But the sentiment of the country has so advanced that the disposition is to increase the term of that executive and limit the presidency to one term; and it is a fact that one of the great parties of the country, that shall be nameless at present, in 1912 enacted in its platform a clause pledging that party, and the candidates who should stand upon that platform, to the enactment of legislation limiting the presidential term to one, and on that platform—

Mr. ALTER. Mr. Chairman: May I interrogate the gentleman?

The CHAIRMAN. Will the gentleman from Philadelphia, Mr. Gordon, permit himself to be interrogated?

Mr. GORDON. Mr. Chairman: I will.

Mr. ALTER. Mr. Chairman: I would like to suggest to the gentleman that it be provided in this section that this limitation shall have the same force and effect as the similar limitation in the platform referred to by him.

Mr. GORDON. Mr. Chairman: He has not heard the history of that platform. I say, on that platform, a President was elected, and a House of Representatives and Senate in accord with that political party. That President was elected, but from the day of his election until now, nothing has been heard of that platform. The President never recommended legislation to the Congress on that subject, and the Congress has never offered any legislation. This is the more remarkable since the preceding Congress had a bill before it limiting the presidency to one term. I do not think I disclose any political secrets when I say that the basis of that act of Congress was to prevent a certain distinguished and valuable public citizen, who was once a President, from again being a candidate for president. That was adopted and passed one House, but by the expiration of Congress it fell. But the Republican party and the Democratic party, and I think all the parties, stand pledged to the idea that the executive, with great public patronage, should not be a candidate for the next succeeding term, and I think that is founded on good sense.

Mr. friend, Mr. Alter, speaks about being distrustful of public officials. It is not being distrustful of public officials, but it is a recognition of the common weakness of humanity. No man who has executive power in a great state or great nation ever voluntarily relin-

quished it at the end of one term. Even the Father of his Country remained two terms in office, but he then voluntarily relinquished it.

There is nothing in the executive office of the state which requires peculiar endowment. No technical endowment is required. The Governor should be a man of broad vision and a statesman, and he should fairly represent the social, political and economic aspects, if you choose, of the people who elected him at the time; and he should advise the legislature from time to time. But there is no peculiar endowment needed in the executive, nothing that is not required of an honest official anywhere; hence, the practice of four years in one term accounts for nothing; and, if precedent and experience are to be considered, I have not observed anywhere in the state, in the remotest county newspaper or in the smallest county meeting up to the greatest, expression of public opinion at any time, any yearning desire to re-elect any Governor after the expiration of his first term.

I, therefore, sincerely trust that this innovation, which is without reason or public demand, shall not be incorporated in the law.

Mr. FOX. Mr. Chairman: I want to refresh the recollection of my friend, Judge Gordon, that for forty-five years we have been acting under this Constitution and the only instance in which the people have exercised their privilege of re-electing a Governor for the intervening term was the election of Governor Pattison; and it seems to me that that is the answer to the suggestion of Committee No. 1, that if we do discover a man whom the people want returned to the office of Governor, they can do it after one term.

I have no fear that the Governor will build up a machine, as has been suggested by Mr. Alter, so as to control the election; but I am in hearty accord with Judge Gordon in the idea that it will contribute to the success of a Governor's administration if he is conscious of the fact that that is his only term for the present. I think that inevitably a man who sees ahead of him the possibility of another term might be influenced, and I think that is the real danger of providing that he may succeed himself immediately.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE IV, SECTIONS 4, 5, 6 AND 7.

The CHAIRMAN. The next sections in order for consideration are sections 4, 5, 6 and 7 of article IV of the Constitution, the report of Committee No. 1 being that these sections shall stand without amendment. Does the Committee desire that these four sections shall be submitted for action en bloc or that they shall be separately considered?

Mr. PEPPER. Mr. Chairman: I move that the question be put upon the four sections en bloc.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

The Secretary read the sections as follows:

Section 4. A Lieutenant Governor shall be chosen at the same time, in the same manner, for the same term, and subject to the same provisions as the Governor; he shall be president of the Senate, but shall have no vote unless they be equally divided.

Section 5. No person shall be eligible to the office of Governor or Lieutenant Governor except a citizen of the United States, who shall have attained the age of

thirty years, and have been seven years next preceding his election an inhabitant of the state, unless he shall have been absent on the public business of the United States or of this state.

Section 6. No member of Congress or person holding any office under the United States or this state shall exercise the office of Governor or Lieutenant Governor.

Section 7. The Governor shall be commander-in-chief of the army and navy of the commonwealth, and of the militia, except when they shall be called into the actual service of the United States.

On the question,

Will the Committee adopt the report?

The CHAIRMAN. The Chair will delay putting the question on the adoption of these sections until the members have a little opportunity to read them.

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on sections 4, 5, 6 and 7 of article IV of the Constitution be adopted.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 8.

The CHAIRMAN. The next section in order for consideration is section 8 of article IV of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 8. The Governor shall nominate and, by and with the advice and consent of a majority of all the members of the Senate, appoint a Secretary of the Commonwealth and an Attorney General during pleasure, a Superintendent of Public Instruction for four years, and such other officers of the commonwealth as he is or may be authorized by the Constitution or by law to appoint.

In offices to which he may appoint, the Governor shall have power to fill all vacancies that may occur during the recess of the Senate or within ten days before final adjournment, by granting commissions which shall expire at the end of their next session, but before final adjournment of such session he shall nominate some one for the full or unexpired term as the case may require; failure of the Governor to so nominate shall be equivalent to a rejection of any person commissioned during such session or the recess following the final adjournment of the same. He shall have power to fill any vacancy that may occur during the recess of the Senate or within ten days before final adjournment in the office of the Auditor General, State Treasurer, Secretary of Internal Affairs, in a judicial office, or in any other elective office which he is or may be authorized to fill.

If a vacancy occurs during a session of the Senate in an appointive or elective office, except within ten days before final adjournment, the Governor shall not appoint, as in the case of a recess vacancy, but shall nominate to the Senate before final adjournment a proper person to fill said vacancy; failure of the Governor to so nominate shall be equivalent to a rejection of any person commissioned during such session or the recess following the final adjournment thereof. In the case of a recess or session vacancy in an elective office a person shall be chosen to said office on the next election day appropriate to such office according to the provisions of this Constitution, unless the vacancy shall occur within two calendar months immediately preceding such election day, in which case the election for said office shall be held on the second succeeding election day appropriate to such office.

No person nominated for an office of trust or profit under the government of this state, who fails to receive confirmation before recess, shall be eligible to appointment to such office during such recess. In acting on executive nominations, the Senate shall sit with open doors, and, in confirming or rejecting nominations of the Governor, the vote shall be taken by yeas and nays and shall be entered on the Journal.

On the question,

Will the Committee adopt the report?

SECRETARY OF INTERNAL AFFAIRS.

Mr. PEPPER. Mr. Chairman: May I ask for information? What reason is there, if any, why the appointive officers in the executive department should not include the Secretary of Internal Affairs? I

ask the question with profound ignorance of the practical workings of the relationship between the department of Internal Affairs and the rest of the executive department. I can understand the various sound reasons that there may be for requiring the popular election of fiscal officers of the commonwealth, the State Treasurer and the Auditor General, who are responsible for the people's money; but what I meant to raise was the question whether there was any sound administrative reason why a Secretary of Internal Affairs should stand upon a different footing from the others who are specified here as appointees of the Governor.

Mr. ALTER. Mr. Chairman: Of course, the gentleman's question does not go to the propriety of this amendment. It would go rather to that part of the Constitution which provides that the Secretary of Internal Affairs shall be elected. This, relating to confirmation, deals with the offices as we find them.

Mr. PEPPER. Mr. Chairman: I entirely understand, sir, that it would be necessary to deal with the question I raise, if it was to be dealt with, when we come to that part of the Constitution which provides for the election of the Secretary of Internal Affairs.

Mr. ALTER. Mr. Chairman: Yes, sir.

Mr. PEPPER. Mr. Chairman: But, if it would be assumed that he was not to be elected, but appointed, would his name not be added in this section to the list of those whom the Governor is to appoint? If not, my question is entirely out of order. My thought was that if the Secretary of Internal Affairs is to be appointed, then the Governor shall nominate and appoint a Secretary of the Commonwealth and an Attorney General during pleasure, a Superintendent of Public Instruction for four years, and then a Secretary of Internal Affairs for such term as might be specified.

Mr. ALTER. Mr. Chairman: Yes, sir. I beg the gentleman's pardon. I was looking at a different part of this proposed section.

As to what the public reason is why the Secretary of Internal Affairs should be elected instead of appointed, I would say to the Committee that I do not know. I do not know the history of the fixing of this office as one to be filled by election, and do not know what reason was in mind when that was so provided.

Mr. CARSON. Mr. Chairman: I do not know that I can supply a complete answer to the inquiry in the mind of the gentleman from Allegheny, Mr. Alter. Speaking out of the knowledge that I acquired of the operations of the state departments during the time I was Attorney General, I agree entirely with Mr. Pepper and I can see nothing in the character of the duties imposed upon the Secretary of Internal Affairs to make it necessary to elect him. He is not a fiscal officer. In the early days, following the adoption of this Constitution of 1873, he did exercise some very material control over the railroads of the state, and made reports to the legislature with regard to the conditions of the railroads. If the Commission will open the Debates of the Constitutional Convention of 1873, on the railroad articles, you will find that it was intended to lay a pretty strong controlling hand on those corporations, and that, therefore, in control there should be some officer elected by popular vote to exercise that function. But little by little those supervisory powers and controlling powers on the part of the Secretary of Internal Affairs shrank and dwindled away until now he has nothing whatever

to do with the railroads except in the most perfunctory manner. He sits as a member of the Board of Pardons. One of his colleagues is the Secretary of the Commonwealth, who is an appointive officer by the Governor, part of the Governor's cabinet, so to speak, and not a constitutional officer. The Attorney General sits there as an appointee of the Governor. But the Secretary of Internal Affairs, with this dwindled jurisdiction, ranks as a constitutional officer with the presiding officer of the Board of Pardons, the Lieutenant Governor of the state.

The Secretary of Internal Affairs is also a member of what is called the Board of Property, whose chief function is to pass judicial judgment, not fiscal judgment or to handle any funds at all in behalf of the state, but to pronounce, with the aid of the Attorney General and Secretary of the Commonwealth, on the subject of titles when claims are made that there have been islands forming in some of the rivers, like the tributaries of the Susquehanna, by flood or accession, or where, up in the mountain counties, there have been overlapping surveys of land which were never closed and where sometimes, through imperfection of surveys in the coal district, the surveys lie like drifts of snow, one on top of the other, and the allegation is made in the application to the Board of Property that the petitioner desires to acquire the title of the commonwealth. A caveat is generally filed by somebody who says, "That is a part of my farm, that is within my boundary line," and that Board of Property sits really as a court practically to determine the boundary lines, but it has no funds at all. Why should the people have to elect an officer of that kind for the discharge of a function which is purely judicial?

Now, at times, the Secretary of Internal Affairs has been directed by act of assembly to act as purchasing officer of the state. When the Dairy and Food Commission and the other commissions charged with the enforcement of laws relating to weights and measures found the commonwealth unequipped with a standard set of scales and measures, an act of assembly made it the duty of the Secretary of Internal Affairs to buy a standard set of scales and measures so that the test of milk and the weight of beans, and so on, and articles of food of that kind, could be determined by some fixed standard of law. But the Secretary of Internal Affairs, being a constitutional officer, declared that he should not be put in the somewhat subordinate position of a mere purchasing agent of a thing like that, and refused to perform the duty, and it was necessary to issue a writ of mandamus in order to point out his duties as purely ministerial.

These are the reasons I call your attention to this office. If you put the officers in the Constitution they allege "We are elected by the people; we hold our office by a title quite as dignified and sacred as the Governor himself." The Attorney General who mandamuses him is not a constitutional officer, but a mere appointee of the Governor, and it is a conflict of authority difficult to control. You may say "the courts will set it straight." But look at the delays. You can not get efficient execution of purely ministerial laws unless your officers are in such a position that they can be commanded at once to do their duty; and, therefore, I agree entirely with Mr. Pepper that the office of Secretary of Internal Affairs—not from the character of the individual who fills it, I am not reflecting on the character of the man, but I am considering the nature of the duties to be

performed—there is no reason why he should be on a ticket to go to popular election throughout the state at large when the Governor can appoint such a person to perform the duties that I have described.

Mr. FISHER. Mr. Chairman: I think that most of the members of this Commission will recall that it is only comparatively lately that the legislature was impressed with the thought that this office was entirely unnecessary, and that an amendment was proposed to abolish the office of Secretary of Internal Affairs. That amendment went to the people and was defeated and—

Mr. ALTER. Mr. Chairman: Allow me to correct the gentleman or refresh his recollection. It passed the legislature of 1911 and then it came up in the legislature of 1913, but was not passed.

Mr. FISHER. Mr. Chairman: I stand corrected. But I recall that the matter was before the legislature, and that there was a strong feeling at that time that the office might as well be abolished, without the public suffering any very serious inconveniences; that, in the change of the administrative offices of the state, other agencies had been created which could well take care of the functions that were then being performed by the Secretary of Internal Affairs. However, the matter was passed by and the office now exists. I think everything that has been said here with respect to the necessity of electing the officer is entirely appropriate. There is no reason why this office should be segregated and set apart for popular action, different from the other heads of departments, and I believe that if Mr. Pepper would embody his thought in an amendment and offer it that it would be a proper subject for consideration, and that when the time comes to consider the office of Secretary of Internal Affairs then the Commission can pass upon whether or not it should be continued as an elective office.

Mr. PEPPER. Mr. Chairman: I should like to ask if it would be agreeable to the chairman of Committee No. 1 if this section were referred back for further consideration, in the light of this debate.

Mr. ALTER. Mr. Chairman: Yes, sir.

MOTION TO RE-REFER SECTION 8 OF ARTICLE IV.

Mr. PEPPER. Mr. Chairman: I move that the Committee of the Whole recommends that this section be referred back to Committee No. 1 for further consideration and report in the light of the information that has been elicited in the course of the debate today.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTIONS 9, 10, 11, 12 AND 13.

The CHAIRMAN. The next section in order for consideration is section 9 of article IV of the Constitution, the report of Committee No. 1 as to section 9, and also sections 10, 11, 12 and 13, being that these sections shall stand without amendment. Is it the pleasure of the Committee that the report of Committee No. 1 shall be voted on, as to these sections, en bloc or that they shall be voted on separately?

SECRETARY OF INTERNAL AFFAIRS.

Mr. CARSON. Mr. Chairman: I am merely going to call attention to the fact that, if the thought that Mr. Pepper had in mind

should be followed out by the committee, of eliminating the Secretary of Internal Affairs from the offices of constitutional position, that the committee should also take into consideration the make-up of the Board of Pardons, because he is here read into office as a member of the Board of Pardons.

The CHAIRMAN. Then I think we better take up the consideration of these sections separately.

ARTICLE IV, SECTION 9.

The CHAIRMAN. The next section in order for consideration is section 9 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 9. He shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence and pardons, except in cases of impeachment; but no pardon shall be granted, nor sentence commuted, except upon the recommendation in writing of the Lieutenant Governor, Secretary of the Commonwealth, Attorney General and Secretary of Internal Affairs, or any three of them, after full hearing, upon due public notice and in open session, and such recommendation, with the reasons therefor at length, shall be recorded and filed in the office of the Secretary of the Commonwealth.

On the question,

Will the Committee adopt the report?

MOTION TO RE-REFER SECTION 9 OF ARTICLE IV.

Mr. ALTER. Mr. Chairman: I move that the Committee of the Whole recommends that the report of Committee No. 1 on section 9 of article IV of the Constitution be referred back to Committee No. 1 in connection with the preceding section.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 10.

The CHAIRMAN: The next section in order for consideration is section 10 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 10. He may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 10 of article IV of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 11.

The CHAIRMAN. The next section in order for consideration is section 11 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 11. He shall, from time to time, give to the general assembly information of the state of the commonwealth, and recommend to their consideration such measures as he may judge expedient.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 11 of article IV of the Constitution be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

MOTION TO RE-REFER SECTION 11 OF ARTICLE IV.

Mr. REED. Mr. Chairman: I think this would be the proper place to insert that the Governor should submit a budget to the legislature. I have no amendment to suggest because I do not know what is in the mind of the committee as to a budget, and therefore I move that the Committee of the Whole recommends that this section be referred back to Committee No. 1 for further consideration, with that in view.

Mr. ALTER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. PINCHOT. Mr. Chairman: Since the budget is one of the responsibilities of the Governor, I would like to suggest that this clause in the recent Constitution prepared in New York by the Constitutional Revision Committee, with reference to the responsibility of the Governor, including the matter of the budget, be referred back to Mr. Alter's committee for further consideration.

The CHAIRMAN. In connection with this section, Mr. Pinchot?

Mr. PINCHOT. Mr. Chairman: In connection with this section, because no one of them can well be considered apart from the other.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

Mr. PINCHOT. Mr. Chairman: May I ask that the Secretary furnish the members of the committee with this section, or, if practicable, the complete document of the New York Constitution?

The CHAIRMAN. Unless there is objection, the Secretary will so understand himself to be instructed.

ARTICLE IV, SECTION 12.

The CHAIRMAN. The next section in order for consideration is section 12 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 12. He may, on extraordinary occasions, convene the general assembly, and in case of disagreement between the two Houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months. He shall have power to convene the Senate in extraordinary session by proclamation for the transaction of executive business.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 12 of article IV of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 13.

The CHAIRMAN. The next section in order for consideration is section 13 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 13. In case of the death, conviction on impeachment, failure to qualify, resignation, or other disability of the Governor, the powers, duties and emoluments of the office, for the remainder of the term, or until the disability be removed, shall devolve upon the Lieutenant Governor.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 13 of article IV of the Constitution be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. CARSON. Mr. Chairman: Is there or is there not an extension of the list of officers who may be called upon—

Mr. CHAIRMAN. Yes, sir; in the next section, Mr. Carson.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE IV, SECTION 14.

The CHAIRMAN. The next section in order for consideration is section 14 of article IV of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 14. In case of a vacancy in the office of Lieutenant Governor, or when the Lieutenant Governor shall be impeached by the House of Representatives, or shall be unable to exercise the duties of his office, the powers, duties and emoluments thereof for the remainder of the term, or until the disability be removed, shall devolve upon the president pro tempore of the Senate; and the president pro tempore of the Senate shall in like manner become Governor if a vacancy or disability shall occur in the office of Governor; his seat as senator shall become vacant whenever he shall become Governor, and shall be filled by election as any other vacancy in the Senate; and the Secretary of the Commonwealth, or in case of a vacancy in that office then the Attorney General, shall in like manner, become Governor if a vacancy or disability shall occur in the office of the Governor during a vacancy in both the office of Lieutenant Governor and the office of president pro tempore of the Senate.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman. I move that the report of Committee No. 1 on section 14 of article IV of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

VACANCY IN OFFICE OF LIEUTENANT GOVERNOR.

Mr. GORDON. Mr. Chairman: May I ask the chairman of Committee No. 1 what the change is in this article?

Mr. ALTER. Mr. Chairman: The change is simply to add the Secretary of the Commonwealth and the Attorney General to those who, in prescribed order, may succeed to the office of Governor, in order to make more remote the possibility of the state's being left without a head.

Mr. KELLY. Mr. Chairman: I notice that it is provided here that whenever the president pro tempore shall become Governor that he shall cease to be a senator; that is, his seat as senator shall become vacant whenever he becomes Governor. The question occurred to me as to whether or not he should cease to hold his office as senator if he should become Lieutenant Governor.

Mr. ALTER. Mr. Chairman: There is a difference because the Lieutenant Governor's most active duty, when the legislature is in session, is to preside over the Senate, and there would be no embarrassment in the president pro tempore of the Senate being a member of the Senate and acting as Lieutenant Governor at the same time. That provision is in the present Constitution, and there is no change suggested by the committee there.

Mr. KELLY. Mr. Chairman: Then the point has been considered?

Mr. ALTER. Mr. Chairman: Yes, sir.

Mr. KELLY. Mr. Chairman: I have no objection.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE IV, SECTION 15.

The CHAIRMAN. The next section in order for consideration is section 15 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 15. Every bill which shall have passed both Houses shall be presented to the Governor; if he approve he shall sign it, but if he shall not approve he shall return it with his objections to the House in which it shall have originated, which House shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of all the members elected to that House shall agree to pass the bill, it shall be sent with the objections to the other House by which likewise it shall be reconsidered, and if approved by two-thirds of all the members elected to that House it shall be a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each House, respectively. If any bill shall not be returned by the Governor within ten days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall be a law, unless he shall file the same with his objections, in the office of the Secretary of the Commonwealth, and give notice thereof by public proclamation within thirty days after such adjournment.

On the question.

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 15 of article IV of the Constitution be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 16.

The CHAIRMAN. The next section in order for consideration is section 16 of article IV of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 16. The Governor shall have power to disapprove of or reduce any item or items of any bill making appropriations of money embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 16 of article IV of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

MOTION TO RE-REFER SECTION 16 OF ARTICLE IV.

Mr. REED. Mr. Chairman: Mr. Pepper is too modest to make the suggestion himself. He says he does not do much talking so he asked me to move that the Committee of the Whole recommends that this section be referred back to Committee No. 1, in connection with the budget provision, and I make that as a motion.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 17.

The CHAIRMAN. The next section in order for consideration is section 17 of article IV of the Constitution, the report of Committee No. 1 being that sections 17, 18, 19, 20, 21 and 22 shall stand without amendment. Is it the pleasure of the Committee that these sections shall be voted on separately or en bloc, in accordance with the report of the committee. The Chair will wait until the members have time to examine them.

Mr. ALTER. Mr. Chairman: I think these sections had better be acted on separately as sections 19 and 21 have reference to the Secretary of Internal Affairs.

The Secretary read the section as follows:

Section 17. The chief justice of the supreme court shall preside upon the trial of any contested election of Governor or Lieutenant Governor and shall decide questions regarding the admissibility of evidence, and shall, upon request of the committee, pronounce his opinion upon other questions of law involved in the trial. The Governor and Lieutenant Governor shall exercise the duties of their respective offices until their successors shall be duly qualified.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 17 of article IV of the Constitution be adopted.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 18.

The CHAIRMAN. The next section in order for consideration is section 18 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 18. The Secretary of the Commonwealth shall keep a record of all official acts and proceedings of the Governor, and when required lay the same, with all papers, minutes and vouchers relating thereto, before either branch of the general assembly, and perform such other duties as may be enjoined upon him by law.

On the question,

Will the Committee adopt the report.

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 18 of article IV of the Constitution be adopted.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 19.

The CHAIRMAN. The next section in order for consideration is section 19 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 19. The Secretary of Internal Affairs shall exercise all the powers and perform all the duties of the Surveyor General, subject to such changes as shall be made by law. His department shall embrace a bureau of industrial statistics, and he shall discharge such duties relating to corporations, to the charitable institutions, the agricultural, manufacturing, mining, mineral, timber and other material or business interests of the state as may be prescribed by law. He shall annually, and at such other times as may be required by law, make report to the general assembly.

On the question,

Will the Committee adopt the report?

MOTION TO RE-REFER SECTION 19 OF ARTICLE IV.

Mr. FOX. Mr. Chairman: I move that the Committee of the Whole recommends that this section be referred back to Committee No. 1 for further consideration and report.

Mr. PERRINE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 20.

The CHAIRMAN. The next section in order for consideration is section 20 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 20. The Superintendent of Public Instruction shall exercise all the powers and perform all the duties of the superintendent of common schools, subject to such changes as shall be made by law.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 20 of article IV of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 21.

The CHAIRMAN. The next section in order for consideration is section 21 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 21. The terms of the Secretary of Internal Affairs, the Auditor General and the State Treasurer shall each be four years; and they shall be chosen by the qualified electors of the state at general elections; but a State Treasurer, elected in the year one thousand nine hundred and nine, shall serve for three years, and his

successors shall be elected at the general election in the year one thousand nine hundred and twelve, and in every fourth year thereafter. No person elected to the office of Auditor General or State Treasurer shall be capable of holding the same office for two consecutive terms. (Amendment of November 2, 1909.)

On the question,

Will the Committee adopt the report?

MOTION TO RE-REFER SECTION 21 OF ARTICLE IV.

Mr. FOX. Mr. Chairman: I move that the Committee of the Whole recommends that this section be referred back to Committee No. 1 for further consideration and report.

Mr. CARSON. Mr. Chairman: I second the motion.

The motion was agreed to.

SECRETARY OF INTERNAL AFFAIRS.

Mr. CARSON. Mr. Chairman: Would it not be well to indicate the reason why the sections are being referred back, it being the fact that the Secretary of Internal Affairs is included in them, and therefore there should be some continuous consideration of the matter? Otherwise a motion simply to refer back appears without a reason, and it requires a great deal of reading through a mass of proceedings to understand why the reference back was made.

The CHAIRMAN. The committee will understand that these sections refer to the office and duties of the Secretary of Internal Affairs.

ARTICLE IV, SECTION 22.

The CHAIRMAN. The next section in order for consideration is section 22 of article IV of the Constitution, the report of Committee No 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 22. The present great seal of Pennsylvania shall be the seal of the state. All commissions shall be in the name and by authority of the Commonwealth of Pennsylvania, and be sealed with the state seal and signed by the Governor.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I move that the report of Committee No. 1 on section 22 of article IV of the Constitution be adopted.

Mr. CONNELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. That completes the calendar before the Committee as made up by the report of Committee No. 1.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress; with the recommendation that sections 17, 18, 20, 22, 24 and the proposed new section of article III and sections 8, 9, 11, 16, 19 and 21 of article IV be re-referred.

SECTIONS RE-REFERRED.

The CHAIRMAN. Sections 17, 18, 20, 22, 24 and the proposed new section of article III and sections 8, 9, 11, 16, 19 and 21 of article IV are re-referred in accordance with the recommendation of the Committee of the Whole.

ADJOURNMENT.

Mr. FISHER. Mr. Chairman: Inasmuch as there is not before the Commission the report of any of the other committees, I move that we do now adjourn, under the motion previously passed, until January 6, 1920, at 12 o'clock noon.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 12.25 o'clock P. M., the Commission adjourned until Tuesday, January 6, 1920, at 12 o'clock noon.

Senate Chamber,

Tuesday, January 6, 1920.

The Commission met at 12 o'clock noon.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

RESIGNATIONS AND APPOINTMENTS.

The Chairman has received word from the Governor that two members of the Commission, the Hon. A. Mitchell Palmer and the Hon. William B. Wilson, owing to the pressure of public duties at Washington, have been compelled to resign from the Commission, and the Governor has appointed in the place of Mr. Palmer, the Hon. Vance C. McCormick, of Dauphin county, and in the place of Mr. Wilson, Mr. John A. Voll, of Philadelphia. As the Secretary of the Commonwealth is present, if Mr. McCormick and Mr. Voll will present themselves at the bar, they will be duly sworn in.

OATH ADMINISTERED TO MESSRS. McCORMICK AND VOLL.

The oath of office was then administered by the Secretary of the Commonwealth to Messrs. McCormick and Voll as follows:

You, Vance C. McCormick and John A. Voll, appointed and commissioned by the Governor of the Commonwealth of Pennsylvania to be members of "The Commission on Constitutional Amendment and Revision" in and for the Commonwealth of Pennsylvania, do solemnly swear and you will support, obey and defend the Constitution of the United States and the Constitution of this commonwealth, and that you will discharge the duties of your office with fidelity; that you have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure your nomination or appointment, except the necessary and proper expenses expressly authorized by law; that you have not knowingly violated any election law of this commonwealth, or procured it to be done by others in your behalf; that you will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to your office other than the compensation allowed by law. And so each of you do swear.

The above oaths were then signed by Messrs. McCormick and Voll.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—18.

English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Perrine, Pinchot, Reed, Smith, Stackpole, Sulzberger, Thorpe, Voll, Schaffer (Chairman).

ABSENT—7.

Alter, Carson, Connelly, Cuyler, Sharpless, Tyson, Warburton.

The CHAIRMAN. A quorum of the Commission being disclosed as present by the calling of the roll, the Commission will proceed with its business.

JOURNAL APPROVED.

The CHAIRMAN. Before each one of the members is the Journal of the proceedings down to this time.

Mrs. MILLER. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

COMMITTEE ASSIGNMENTS.

The CHAIRMAN. The Chair announces the appointment of Mr. McCormick as a member of Committee No. 1, so that that committee will consist of Mr. Alter, chairman, Mr. Fisher, Mr. Tyson, Mr. McCormick and the Chair; and the appointment of Mr. Voll as a member of Committee No. 3, so that that committee will consist of Mr. Thorpe, chairman, Mr. Sharpless, Mr. Munce, Mrs. Miller and Mr. Voll.

RESIGNATION OF ASSISTANT SECRETARY.

The CHAIRMAN. The Chair has received and lays before the Commission the resignation of Philip T. Meredith as an assistant secretary of the Commission.

Mr. FOX. Mr. Chairman: I move that the resignation of Philip T. Meredith as assistant secretary be accepted.

Mrs. MILLER. Mr. Chairman: I second the motion.

The motion was agreed to.

Mr. FOX. Mr. Chairman: I also desire to move that the matter of filling the vacancy in the position of assistant secretary, created by the resignation of Philip T. Meredith, be postponed for the present, on the ground that it may turn out from the experience of the Secretary, and as the result of the organization that he is now making, an additional secretary may not be required.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

EMPLOYMENT OF STENOGRAPHERS.

Mr. FISHER. Mr. Chairman: I offer the following resolution and move its adoption.

The Secretary read the resolution as follows:

Resolved, That the Chairman be authorized to employ such stenographers from time to time as he may deem necessary to report the proceedings of the Commission.

Mr. THORPE. Mr. Chairman: I second the motion.

On the question,

Will the Commission agree to the motion?

The CHAIRMAN. You have heard the resolution offered by Senator Fisher, the chairman of the Committee on Organization and Rules. I may say this resolution grows out of the fact that last night one of the stenographers resigned and we have had some difficulty in arranging for a stenographic force for today, but it is now fully arranged.

On the question recurring,

Will the Commission agree to the motion?

It was agreed to.

EXECUTIVE STENOGRAPHER.

Mr. FISHER. Mr. Chairman: I offer the following resolution and move its adoption.

The Secretary read the resolution as follows:

Resolved, That the Commission appoint Miss Cora Duffey as executive stenographer at a salary at the rate of one hundred and fifty dollars a month.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. Has any member of the Commission anything to bring before the Commission at this time?

COMMUNICATIONS.

Mr. THORPE. Mr. Chairman: During the interim since the last meeting, the Commission has received communications of various kinds from various parties concerning matters supposed to be of interest to the public. As these communications are in the form of resolutions, letters, and so forth, it seems inexpedient to fill out the proceedings in print with the reprint of them. I would therefore move, Mr. Chairman, that these communications be made known to the Commission merely by their subject-matter and be referred to the Secretary, who shall distribute them to the proper committees.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

TIME OF MEETING.

Mr. FISHER. Mr. Chairman: If you please, there is one more matter, and that has reference to the session itself. The members of the Commission doubtless have private matters to attend to, and it would be very helpful if there would be some program agreed upon by which the members could arrange their own affairs in accordance therewith; and I ask that the Chairman will, if he sees fit, make known what we may depend upon for meetings during January or any other time that is agreeable.

The CHAIRMAN. The Committee on Organization and Rules of which the Chair is a member, held a meeting this morning; that subject was taken up, and Senator Fisher has a resolution to offer. The proposed resolution comprehends meetings for next week only. I think, however, it might be a desirable thing to consider the meetings of the Commission on a little broader line for this reason. It seems to me that the important thing to do now is to get the tentative draft of the Constitution out of the way, so that it can be submitted to those persons who desire hereafter to come before the Commission, as quite a number do, to discuss it, or to discuss certain features of it. I take it for granted after the tentative draft is adopted in the Committee of the Whole, that will be the time when it will go to the public, and when any persons desiring to discuss any matters before the Commission will be invited to present their views. Now, in order to do that, in order to get it through, say, by the middle of February—I have given some thought to that—it will require rather continuous meetings of the Commission. Then, my thought was, that there ought to be possibly a month given in which other persons outside the Commission would study the tentative draft, which the Commission had prepared. At the end of that month, the Commission would again re-

sume its sessions to hear the persons who desire to discuss any particular phases of it or the entire Constitution, and then the Commission would proceed after that discussion with its final work. If it is not done in that way, it seems to me the sessions of the Commission are going to drag along all through the summer, and I know that there are so many busy men and busy women on the Commission that that is not desired; also, this is rather a bad year for things to drag, because we are in a presidential nomination and election this year. Therefore to bring the matter before the Commission as far as it has been developed by the Committee on Organization and Rules, I recognize Senator Fisher in order that he may bring forward the resolution of the committee.

ORDER OF BUSINESS.

Mr. FISHER. Mr. Chairman: I offer the following resolution and move its adoption.

The Secretary read the resolution as follows:

Resolved, That the order of business for Wednesday, January seventh, at ten o'clock A. M., shall be the consideration of the reports of sub-committees by the Committee of the Whole.

Mr. STACKPOLE. Mr. Chairman: I second the motion.

The motion was agreed to.

TIME OF NEXT MEETING.

Mr. FISHER. Mr. Chairman: I am directed by the same committee to offer the following resolution and move its adoption.

The Secretary read the resolution as follows:

Resolved, That the Commission, when it adjourns this week, shall adjourn to meet on Tuesday, January thirteen, at twelve o'clock noon, and that its sessions next week shall be on Tuesday, January thirteenth, Wednesday, January fourteenth, and Thursday, January fifteenth.

Mr. MUNCE. Mr. Chairman: I second the motion.

On the question,

Will the Commission agree to the motion?

The CHAIRMAN. Are there any remarks on the resolution, which covers an adjournment from this week to three days' session beginning on Tuesday of next week? Of course, it does not carry anything beyond that, the committee not feeling that, at this time, it was the wise thing for it to formulate a plan that extended further than from week to week; but, if it is the desire of the Commission to modify that in any way and to extend it, there is no question but that the committee having the matter in charge would be glad to accept any suggestions.

Mr. FOX. Mr. Chairman: From a personal standpoint, it would be very much more convenient for me if that resolution were changed to read Wednesday, Thursday and Friday of next week. If there is objection to that, of course, I do not press it.

The CHAIRMAN. Has any other member of the Commission anything to suggest?

Mr. PEPPER. Mr. Chairman: If it accords with the plans of the chairman of the committee, I would suggest as an amendment that the weekly sessions on the days designated in the resolution be made the order for the work of the Commission during the residue of the month of January. It seems to me, if such an amendment prevails, it will be possible to carry out the plan which the Chair in-

licated a few moments ago, and it will also have the advantage of enabling some of us who are making court engagements and the like to know ahead just when our presence here will be required.

Mr. FISHER. Mr. Chairman: I think it is the general sense of the committee that the weekly sessions of the Commission shall continue until the preliminary work of the Commission has been accomplished. Now with that in mind, we presented the program for the week in advance. If it would be any convenience to the Commission, or to the members of the Commission, to know for a further period in advance what the program will be, I can see no objection to the adoption of a resolution such as is suggested by Mr. Pepper, that, so long as this preliminary work is in hand, the meetings be held on Tuesday, Wednesday and Thursday of each week until the work is completed. Do I understand that was offered as a motion?

Mr. PEPPER. Mr. Chairman: I had limited it to the month of January, because I understood the Chairman to suggest the thought that during February, perhaps, time should be given for deliberation upon what up to that time had been the completed work of the Commission. I should be very glad to modify the proposed amendment in the way you suggest.

The CHAIRMAN. The Chair's thought was, judging by what had been accomplished, possibly it would be the middle of February before the preliminary work would be out of the way. This amendment is accepted by Senator Fisher and the resolution is modified in the respect that until the preliminary work of the Commission in the formulating of a tentative draft of the Constitution is accomplished, the Commission shall meet weekly on Tuesdays, Wednesdays and Thursdays, the meeting on Tuesday to be held at twelve o'clock noon.

Has any member of the Commission anything to say on the resolution as amended?

On the question recurring,

Will the Commission agree to the motion?

It was agreed to.

The CHAIRMAN. Has any other member of the Commission anything to bring forward at this time?

PROPOSED AMENDMENT.

Mr. REED. Mr. Chairman: I do not know whether this is in order; but, as it is an additional amendment, I suppose it should be submitted to the Commission and be referred to the proper committee. I therefore offer the following proposed amendment to the Constitution and move that it be referred to Committee No. 1.

The Secretary read the amendment as follows:

Whenever an amendment to the Constitution of the United States shall be proposed by the Congress of the United States, the legislature, before taking action upon such amendment, shall submit the same to the voters of the state at the next general or municipal election for the purpose of obtaining the judgment of the said voters upon the advisability of said amendment.

Mr. STACKPOLE. Mr. Chairman. I second the motion.

The motion was agreed to.

The CHAIRMAN. Has any other member of the Commission anything to bring before the Commission at this time?

PROCEDURE.

Mr. THORPE. Mr. Chairman: Is it desirable that the substance of proposed changes be recommunicated to the open session here?

The CHAIRMAN. I think either way would be entirely proper. I think it gives the Commission an idea what is going on; or they can be referred directly to the committees. If it is your own committee, it can be referred directly to your own committee.

Mr. THORPE. Mr. Chairman: No, sir; this would be for another committee. Here is one that was really sent from Ohio.

The CHAIRMAN. If any member of the Commission proposes an amendment that he or she desires to have considered then, it seems to me, it would be proper to make the reference in open session; but if we are to do that with all of the numberless ones that we receive—I must have a hundred—we will get our record very much more voluminous than we desire.

Mr. THORPE. Mr. Chairman: Then I will hand these to the Secretary in accordance with the previous resolution.

Mr. REED. Mr. Chairman: The amendment I will hand to the committee directly.

The CHAIRMAN. I think you are correct in that, Judge Reed.

Has any other member of the Commission anything to bring before the Commission at this time? If not, it would seem to the Chair that it might be in order that a recess should be taken to an hour satisfactory to the Commission, in order that the committee may resume their consideration of matters before them.

RECESS.

Mr. FISHER. Mr. Chairman: I move that the Commission do now recess until 2.30 o'clock this afternoon.

Mr. VOLL. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 12.30 o'clock P. M., the Commission took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2.30 o'clock P. M.

The Chairman, William L. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Commission having arrived, the Commission will be in order.

Have any of the committees anything to report at this time? I know Committee No. 1 has not.

Has Committee No. 2 anything to report?

Has Committee No. 3 anything to report?

Has Committee No. 4 anything to report?

Has Committee No. 5 anything to report?

Has any member of the Commission anything to bring before the Commission at this time? If not, it would seem to the Chair that it would be in order that the Commission take a further recess until an hour late in the day in order that the committees may go ahead with their work and complete their reports. If some member will suggest a recess, say, until five or five thirty o'clock, then the reports of committees can come in at that time, and if any of the committees are ready to report, their reports could be arranged for tomorrow's calendar.

RECESS.

Mr. FISHER. Mr. Chairman: I move that the Commission do now take a recess until 5 o'clock this afternoon.

Mr. PERRINE. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 2.50 o'clock P. M., the Commission took a recess until 5 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 5 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Commission having arrived, the Commission will be in order.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are any committees prepared to report?

Has Committee No. 1, Senator Fisher, acting chairman, anything to report?

Mr. FISHER. Mr. Chairman: Committee No. 1 reports progress.

The CHAIRMAN. Committee No. 1 reports progress and it will be continued for further report.

Has Committee No. 2 anything to report?

Mr. FOX. Mr. Chairman: In the absence of General Carson, I beg to report progress.

The CHAIRMAN. Committee No. 2 reports progress and will be continued.

Has Committee No. 3 anything to report?

Mr. THORPE. Mr. Chairman: Committee No. 3 reports progress and begs leave to be continued. Its report will be in tomorrow.

The CHAIRMAN. Committee No. 3 will report tomorrow and will be continued.

Has Committee No. 4 anything to report?

Mr. PEPPER. Mr. Chairman: Committee No. 4 has been in session not only during the day, but during the Holidays, and reports progress. The committee has in course of preparation a summary of its activities, and asks leave to hand the same to the Secretary instead of waiting to perfect it.

The CHAIRMAN. Leave will be granted to Committee No. 4 to continue.

Has Committee No. 5 anything to report?

Mr. SMITH. Mr. Chairman: Committee No. 5 begs leave to report progress.

The CHAIRMAN. Committee No. 5 reports progress and will be continued.

Has any member of the Commission anything to bring before the Commission at this time?

COMMITTEE PROCEDURE.

Mr. THORPE. Mr. Chairman: There is a matter I desire to present. I find that in our committee we differ in opinion on some matters. We do not like to report that we are in favor of any measure when the committee is not unanimous, but desire that the measure

be brought before the entire Commission. In the report of the committee would it not be perfectly proper to say something to that effect?

The CHAIRMAN. It seems so to the Chair. That is true in the committee of which the Chair is a member, and we intend to report.

Has any other member of the Commission anything to offer at this time?

If there is nothing to come before the Commission, the Chair is prepared to entertain a motion to adjourn until such time as suits the convenience of the Commission.

ADJOURNMENT.

Mr. KELLY. Mr. Chairman: I move that the Commission do now adjourn until tomorrow morning at 10.30 o'clock.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 5.15 o'clock P. M., the Commission adjourned until 10.30 o'clock tomorrow morning.

Senate Chamber,

Wednesday, January 7, 1920.

The Commission met at 10.30 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The roll was called by the Secretary and was as follows:

PRESENT—21.

Alter, Cuyler, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Perrine, Pinchot, Reed, Smith, Stackpole, Sulzberger, Thorpe, Voll, Warburton, Schaffer (Chairman).

ABSENT—4.

Carson, Connelly, Sharpless, Tyson.

The CHAIRMAN. A majority of the Commission being present, as disclosed by the call of the roll, the Commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the Journal of yesterday's proceedings be dispensed with and the Journal approved.

Mrs. Warburton. Mr. Chairman: I second the motion.

The motion was agreed to.

REPORTS FROM COMMITTEES.

The CHAIRMAN. The first business in order will be the reports of committees.

Has Committee No. 1 anything to report?

Mr. FISHER. Mr. Chairman: Committee No. 1 will make its report later in the day.

The CHAIRMAN. Has Committee No. 2 anything to report?

Mr. FOX. Mr. Chairman: No, sir.

The CHAIRMAN. Has Committee No. 3 anything to report?

Mr. THORPE. Mr. Chairman: Committee No. 3 will report later in the day.

The CHAIRMAN. Has Committee No. 4 anything to report?

Mr. PEPPER. Mr. Chairman: Committee No. 4 will report later in the day, sir.

The CHAIRMAN. Has Committee No. 5 anything to report?

Mr. ENGLISH. Mr. Chairman: Committee No. 5 has nothing to report at this time.

COMMITTEE OF THE WHOLE.

The CHAIRMAN. If there is no objection, the Commission will resolve itself into the Committee of the Whole to take up the calendar and act upon reports of committees in accordance with the resolution adopted yesterday. The members will find the printed calendars on their desks.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

ARTICLE VI, SECTION 1.

The CHAIRMAN. The first section in order for consideration is section 1 of article VI of the Constitution, the report of Committee No. 2 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 1. The House of Representatives shall have the sole power of impeachment.

On the question,

Will the Committee adopt the report?

Mr. SULZBERGER. Mr. Chairman: I move that the report of Committee No. 2 on section 1 of article VI of the Constitution be adopted.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VI, SECTION 2.

The CHAIRMAN. The next section in order for consideration is section 2 of article VI of the Constitution, the report of Committee No. 2 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 2. All impeachments shall be tried by the Senate; when sitting for that purpose the senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members present.

On the question,

Will the Committee adopt the report?

Mr. SULZBERGER. Mr. Chairman: I move that the report of Committee No. 2 on section 2 of article VI of the Constitution be adopted.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VI, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of article VI of the Constitution, the report of Committee No. 2 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 3. The Governor and all other civil officers shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this commonwealth; the person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

On the question,

Will the Committee adopt the report?

Mr. SULZBERGER. Mr. Chairman: I move that the report of Committee No. 2 on section 3 of article VI of the Constitution be adopted.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VI, SECTION 4.

The CHAIRMAN. The next section in order for consideration is section 4 of article VI of the Constitution, the report of Committee No. 2 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 4. All officers shall hold their office on the condition that they behave themselves well while in office, and on conviction of misbehavior in office or of any infamous crime, in addition to the penalties provided by law the court shall order the removal of such officer from office.

On the question,

Will the Committee adopt the report?

Mr. SULZBERGER. Mr. Chairman: I move that the report of Committee No. 2 on section 4 of article VI of the Constitution be adopted.

Mr. REED. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

REMOVALS FROM OFFICE.

Mr. PEPPER. Mr. Chairman: May I ask for a little light on this proposal? It is not quite clear to me, sir. If I correctly understand the provisions of the Constitution as it stands, it provides that officers shall be removed from office "on conviction of misbehavior in office or of any infamous crime;" but it does not specify how the removal is to be effected. This amendment contains language for which, no doubt, there is some good reason; but it strikes me as a little unusual, to the effect that upon conviction the court shall order the removal of such officer from office. I was wondering what the significance would be of that form of expression. I am thinking of a case in which some one who is in fact an officer is convicted in a criminal proceeding, in which the sentence proceeds according to law. The question that I am raising is whether this order of removal from office is to be a part of the sentence, whether it is a self-executing provision of the Constitution, or whether it must be prescribed in the criminal code that this sentence is to be added to the other sentence to be pronounced by the court. I do not want to vote one way or the other until it is made a little clearer to me than it is now. I therefore ask the chairman of the committee to give me the benefit of his thought upon it.

The CHAIRMAN. The chairman of this committee is absent, but Judge Sulzberger is the ranking member of the committee on the floor.

Mr. SULZBERGER. Mr. Chairman: The object was as the gentleman from Philadelphia, Mr. Pepper, has conjectured. There was nothing in the old Constitution that provided for a mode of removal, and the subject of this amendment was to provide for a mode of

removal by making it part of the judgment of the court. If it does not effect that purpose, and if any other form of expression would effect that purpose better, certainly, as far as I am concerned, I would be very glad to hear it.

Mr. PEPPER. Mr. Chairman: I think that answers my question. I was not sure whether the order of removal from office was to be part of the sentence following a conviction by a court, or whether the section had something to do with the judgment in impeachment proceedings. Judge Sulzberger has made it clear to me that it refers to the sentence of the court following a conviction in that court for an infamous crime or misbehavior in office. I thank you.

Mr. FOX. Mr. Chairman: May I call the attention of Mr. Pepper to the fact that we have inserted in this section "in addition to the penalty provided by law," on the question whether it should be part of the sentence or not?

Mr. PEPPER. Mr. Chairman: I understand that.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE VII, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article VII of the Constitution, the report of Committee No. 2 being that this section shall stand without change, other than the third line of the second clause, which shall be changed by adding after the words "the supreme court" the words "and of the superior court."

The Secretary read the section as follows:

Section 1. Senators and representatives and all judicial, state and county officers shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States, and the Constitution of this commonwealth, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this commonwealth, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law."

The foregoing oath shall be administered by some person authorized to administer oaths and in the case of state officers and judges of the supreme court and of the superior court shall be filed in the office of the Secretary of the Commonwealth, and in the case of other judicial and county officers, in the office of the prothonotary of the county in which the same is taken; any person refusing to take said oath or affirmation shall forfeit his office; and any person who shall be convicted of having sworn or affirmed falsely, or of having violated said oath or affirmation, shall be guilty of perjury, and be forever disqualified from holding any office of trust or profit within this commonwealth. The oath to the members of the Senate and House of Representatives shall be administered by one of the judges of the supreme court or of a court of common pleas, learned in the law, in the hall of the House to which the members shall be elected.

On the question,

Will the Committee adopt the report?

Mr. SULZBERGER. Mr. Chairman: I move that the report of Committee No. 2 on section 1 of article VII of the Constitution be adopted.

Mr. REED. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

SUPERIOR COURT.

Mr. PEPPER. Mr. Chairman: May I ask the chairman of Committee No. 2 whether this has the effect of making the superior court a constitutional body, or does it mean simply a superior court when there is a superior court?

Mr. SULZBERGER. Mr. Chairman: I cannot answer that question any more readily than anybody else can.

Mr. GORDON. Mr. Chairman: I can only express my own conviction as to the result of our joint labor. The purpose was to insert the superior court as a body of judges which are to be sworn in this manner, together with the supreme court, because of the intention by the further action of the committee to make the superior court a constitutional court. Otherwise, there would have been no relevancy in inserting this in the oath of office. Therefore, that proposition is made in this article.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE VIII, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall be amended to read as in the present Constitution, except line 1, by striking out the word "male" after the word "Every" also line 4, by inserting after the word "registration" the words "or other qualifications;" the remainder of section 1, as printed in the present Constitution.

The Secretary read the section as follows:

Section 1. Every citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections, subject, however, to such laws requiring and regulating the registration or other qualifications of electors as the general assembly may enact:

1. He shall have been a citizen of the United States at least one month.
2. He shall have resided in the state one year (or, having previously been a qualified elector or native-born citizen of the state, he shall have removed therefrom and returned, then six months) immediately preceding the election.
3. He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.
4. If twenty-two years of age and upwards, he shall have paid within two years a state or county tax, which shall have been assessed at least two months and paid at least one month before the election. (Amendment of November 5, 1901.)

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 1 of article VIII of the Constitution be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

EQUAL SUFFRAGE—ENGLISH LANGUAGE.

Mr. REED. Mr. Chairman: I want to suggest an amendment to this section, that the section stand practically as it is, with the substitution as the first qualification that, "He shall be able to understand and speak the English language;" and as to the sixth qualification that "Every person, male or female, who may be authorized to

vote at elections under the provisions of the Constitution of the United States, or any present or future amendment thereof, and who possesses the qualifications embraced in the first, second, third, fourth and fifth paragraphs of this section, shall be entitled to vote at all elections."

I am not going to make an anti-suffrage speech; I have not the courage to do it even if I wanted to, and I do not want to. But I can only say this, that I do not believe in a complex state of this kind we can gain anything by adding to our electorate. So it seems to me, as it is probable the Federal amendment will be accepted by enough of the states to make it effective, we ought to meet that condition as it is met by the addition of an additional section, and when that does become effective, of course, the Constitution comes into line with it, and male and female may vote.

The other essential thing which I think this Committee ought to consider is the imposition of a knowledge of the English language upon the voters. It does seem that the man who votes in this state ought to know enough about the English language to know something about the Constitution of the United States, and what this government stands for. Maybe I am speaking out of order, because my amendment has not yet been seconded.

Mr. ALTER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

The CHAIRMAN. Does the Chair understand that Judge Reed offers this as an amendment to section 1 of article VIII?

Mr. REED. Mr. Chairman: As reported by the committee; yes, sir.

The CHAIRMAN. The Secretary will now read the amendment proposed by Judge Reed.

The Secretary read the proposed amendment as follows:

Section 1. Every male citizen twenty-one years of age possessing the following qualifications, shall be entitled to vote at all elections, subject, however, to such laws requiring and regulating the registration of electors as the general assembly may enact, and also subject to such educational qualifications as the general assembly may provide.

1. He shall be able to understand and speak the English language.

2. He shall have been a citizen of the United States at least one month.

3. He shall have resided in the state one year (or, having previously been a qualified elector or native-born citizen of the state, he shall have removed therefrom and returned, then six months) immediately preceding the election.

4. He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.

5. If twenty-two years of age and upwards he shall have paid within two years a state or county tax, which shall have been assessed at least two months and paid at least one month before the election.

6. Every person, male or female, who may be authorized to vote at elections under the provisions of the Constitution of the United States, or any present or future amendment thereof, and who possesses the qualifications embraced in the first, second, third, fourth and fifth paragraphs of this section, shall be entitled to vote at all elections.

On the question recurring,

Will the Committee agree to the amendment?

QUALIFICATIONS OF ELECTORS.

Mr. SULZBERGER. Mr. Chairman: I would like to get some information from Judge Reed as to the number of citizens who are now electors who would be disfranchised by this amendment.

Mr. REED. Mr. Chairman: I do not know, sir. Whatever the number is, they ought to be disfranchised.

Mr. VOLL. Mr. Chairman: I have some views that I would like to express on this clause of the Constitution that we are about to adopt either with or without the amendment of the committee. It seems to me that every man and woman who is qualified for citizenship under the Constitution should have no restrictions placed upon the right of franchise through a property qualification or the payment of a direct tax. It is true, in times gone by, in the formative period of development this property qualification and the payment of a direct tax was necessary in order that means might be provided so that the government could function in accordance with basic and statutory law. As I view it today, this is no longer necessary; and with the great amount of wealth that has been produced in our land, and particularly so in this great commonwealth, it seems to me that there could be some other method found of meeting the current expenses of the state and the municipalities and other different units which go to make up this great commonwealth. Moreover, it is my firm belief that it is the duty of a democracy not only to teach its citizens that the ballot is the real safeguard for liberty, but it is also the duty of a democracy to see to it that the exercise of the franchise is free and attractive; because, it seems to me, that by practicing democracy for itself only can we surely retain democracy; and it is because of these views I favor the committee's report.

Mr. THORPE. Mr. Chairman: Perhaps it is pertinent to remark with reference to Judge Reed's amendment, or suggested amendment, that the educational test of reading, writing or speaking the English language has rather an important history in our country. There is one state, Mississippi, whose Constitution of 1790 requires that a voter shall be able to explain any passage in the Constitution of that state to the satisfaction of the election board, but it does not take a very lively imagination to see the effect of that upon a certain population in that state. In the state of Massachusetts there is an educational test as to being able to read the Constitution. I beg to submit this inquiry, especially to Judge Reed: Who is to decide that a person speaks the English language? Who is to decide that he understands it? Is it the board of elections or somebody else? Does this tend to run into a partisan matter? Those who do not speak the language as I speak it and pronounce it, or as you speak it—do they speak the language that we speak? It is a delicate matter. We all think the citizens of the United States should speak and understand the English language; some of us believe that only English books should be printed officially, that only English should be in our newspapers and nothing further; but it would be rather grewsome to put that into a constitutional provision. Therefore, Mr. Chairman, the gentlemen who preceded me, I might say, had not come into the Commission and was not a member of the committee at the time of this particular report, and yesterday, in discussing this matter he reserved his opinions in the matter, as the report of the committee would shortly come before the Committee of the Whole. But, Mr. Chairman, we have said in this suggestion that the qualification shall be such educational qualifications as the general assembly may super-add. While that shifts the responsibility and makes it somewhat

elastic and responsive to public opinion, to lay a hard and fast line that a man must have a specific knowledge on any subject to be a citizen is rather serious, and has not worked practically in the Constitutions of the states. I do not say this simply to support the suggestion of the committee, nothing of the kind, but to recall to the memory of my colleagues the experience of the states in former years on this point.

Mr. REED. Mr. Chairman: I only want to say in explanation to my friend that the original report of the committee, as I remember it, did not have the words "educational qualifications."

Mr. THORPE. Mr. Chairman: I beg pardon; that was omitted by the committee's stenographer and we discovered it later.

Mr. REED. Mr. Chairman: I wrote that into my amendment because I understand that was the position of the committee down to that point. So far as that is concerned, my amendment is in accord with the committee and is their suggestion. What I am responsible for is the first sub-section, "He shall be able to understand and speak the English language." Now, the words "or other qualifications" are stricken out and changed to "and such educational qualifications." There is no property qualification, there is no question of paying taxes in this that was not in the original Constitution, and the last provision is my own production, the sixth.

Mr. PINCHOT. Mr. Chairman: Do I understand correctly that Judge Reed's amendment would restore the word "male" in the first line of section 1?

Mr. REED. Mr. Chairman: Certainly.

Mr. PINCHOT. Mr. Chairman: I hesitate, on account of the lively affection which I have come to have for Judge Reed, to differ with him in this matter, although I foresee that we shall differ on a considerable number of questions before we are through; but I want to suggest to him and to the members of the Committee that Judge Reed has precipitated into the discussions of this body the whole question of equal suffrage and that, in doing so on the side that he has taken, he proposes in effect to reverse the action of the legislature of the state of Pennsylvania in approving the recent constitutional amendment of the United States, and to put us back among those states which deny the women the right to vote. In addition to the very obvious argument which is furnished by the presence of two ladies on this Commission, it is hardly necessary to make the application that if women are good enough to make Constitutions, they are certainly good enough to vote under those Constitutions. We should find ourselves, by taking any such action, squarely across the whole stream of progress in the United States, in fact not only in the United States, but in the whole world; and I can hardly believe that this Commission, in view of the world movement, our own movement, and the inherent rightness of the demand that women shall take their equal part in the affairs of the nation—I can hardly believe that this Commission will set itself squarely against the progress of the times. To bring the thing down to political matters, you will recall that at least one of the national committees of the two great parties proposes to give women equal representation with men in the quota from each state and that the other one apparently is about to do so. For every reason, it seems to me—again I regret to differ with my friend, the Judge—it seems to me that this Commission cannot afford to put

itself back in the dark ages of legislation and refuse to take its place among the more forward-looking commonwealths of this nation.

Mr. REED. Mr. Chairman: I am trying to restore the reputation for conservatism which I lost yesterday afternoon. I have not precipitated the question of woman suffrage into this Commission, at least, I did not intend to. I said, when I started out, I had not the courage to do it even if I wanted to, and I do not want to. I am trying to meet the situation as it is. The people of this state, when they were called on to vote on the question of woman suffrage, turned it down and voted against it by some forty odd thousand majority, as I remember it. The question of woman suffrage came from another angle, through the Federal amendment. Now, all I propose is that we harmonize this Constitution with the Federal amendment when it passes, if it does pass, and that it is not for us to precipitate into this revision of the Constitution something that may make a great difference of opinion, either in the legislature or at the polls—probably not in the legislature, but at the polls. You know, when we look at ourselves frankly, we have not any power to do anything. We are a debating society, and we hope to suggest some amendments to the Constitution which, after full discussion, will commend themselves to the people and pass with as little difference of opinion as possible, and it was solely with that in view that I suggested this amendment. I have no ulterior purpose; I do not want to break Mr. Pinchot's heart nor to lose his affection. That is the explanation of the amendment.

The CHAIRMAN. The Chair is in doubt as to the exact amendment that the committee desired to submit to the Committee of the Whole. Is it correct as printed on the calendar, "by inserting after the word 'registration' the words 'or other qualifications?'"

Mr. THORPE. Mr. Chairman: The report would have come in this morning, but the reading of it by the Secretary makes it very plain what the point is. It was intended that the report should be before the Committee at the present time. "After the word 'qualifications,' second line, insert 'and such educational qualifications as the general assembly may superadd.'" That will be in the second line of the first section of article VIII, "and such educational qualifications as the general assembly may superadd." That was the intention; how it was overlooked by the committee stenographer, we do not know.

The CHAIRMAN. Then the amendment would be to insert at the point you mention the words "and such educational qualifications as the general assembly may superadd"—is that it?

Mr. THORPE. Mr. Chairman: Yes, sir.

Mrs. MILLER. Mr. Chairman: I would like to speak on two points of Judge Reed's amendment. The first one refers to the word "male." Undoubtedly, it would be more popular, in my opinion, if, in the Constitution which will be submitted to the voters, the word "male" were left out. Although the referendum was defeated by something like fifty-five thousand, we have the fact that in New York state the same referendum was passed two years later, and we have the great sweep of sentiment in this country for woman suffrage, so that I hope the Committee will not consider including the word "male" in this section. As to the matter of educational qualifications, I would like to speak as the only member of this Commission who

probably has worked exceedingly hard to get a vote. I am in hearty accord with Judge Reed that we need some educational qualification, making it just as stringent as possible, and I hope that such will go through. I think we are having experience all over this country of men and women who cannot speak and read the English language trying to decide questions that are of great importance to this country.

Mr. GORDON. Mr. Chairman: So far as the amendment offered by Judge Reed is concerned, restoring the qualification "male" as an incident of suffrage, I hope it will not prevail, and I feel similarly with reference to his amendment touching what has been termed by him, and confirmed by Mrs. Miller, the educational qualifications which he attaches. I understand your amendment, Judge Reed, to require the voter to read the English language.

Mr. REED. Oh no, to speak it.

Mr. GORDON. And read it?

Mr. REED. Understand it.

Mr. GORDON. To speak and understand the English language. I am opposed also to that amendment. I will briefly give my reasons. The things which are desired in an electorate are intelligence, virtue and probably a property stake in government. I do not know any other qualifications beyond these. It is desirable that the voter shall have a mind capable of grasping the subjects upon which he is called to pass as an elector. He should not be a lunatic; he should not be an idiot; and beyond this our law has heretofore not proceeded. There is no rule by which the intelligence of the person is to be determined contingent upon his right to vote, but the basic foundation of suffrage is the intelligence of the voter. Now, it seems as though this amendment proposes to make the ability to read and speak understandingly the English language a condition of what? Of intelligence? That is not a criterion of intelligence. It may be of scholarship. It may be of linguistic ability, but certainly not intelligence. Intelligence is not bounded by race, religion or language. It is something entirely different. Virtue, of course, is an implied qualification of the right to vote. Not only is it supposed that the elector has intelligence and knows what he is doing, but it is supposed that his impulses are upright, righteous and altogether or nearly lovely, so that he will have the knowledge wherewith to vote and the good heart to vote right.

These are the fundamental and inevitably ideal qualifications of a voter. There is one other which the laws of man have incorporated into this subject, and that is the property stake in government. For a long time, in the most democratic government of states, a freehold, the ownership of a freehold, was necessary, and latterly a lesser estate, until it came down in this commonwealth by and by, when the payment of a tax was sufficient to give a man the qualifications to vote. But, beyond these three things, intelligence, virtue and property stake in government, I know of no other qualifications which may be asked for in a voter.

Of course, I assume that the qualification Judge Reed would incorporate into the Constitution and fix it there, the ability to speak and understand the English language, is the child of the delirium, we will call it, of the present moment. The anarchy which exists in some quarters, the unrest which exists in others, the apprehension which

exists everywhere, give birth to fear, and fear gives birth to rash remedies, and one of these rash remedies—I think the rashest I have heard, on a logical basis—is that you should require of a voter the ability to speak and understand the English language. Of course, that implies—it must—that the man who has not yet acquired the ability to speak the English language is hostile to our institutions and our government, as if the ability to speak the tongue and understand the tongue would give him the democratic heart and purpose. There is no logic in that. The test, Mr. Chairman, of ability to speak the English tongue and to understand it has been pretty fairly instanced as indicated by the chairman of the committee in the state of Mississippi, where something like this is now in operation, that it had been found to serve the excellent purpose of disfranchising a majority of the citizens of that state because of color under the ostensible requirement of ability to speak understandingly the English tongue.

Mr. Chairman, the difficulty is in our own tongue and those who understand it and write it and speak it. There will not be any danger, I think, of a serious character to our institutions if you can clean the English speech and the English literature of its anarchistic tendencies, and if the smooth-spoken speech of our native ancestors could be made always the vehicle of true democracy, so long as it is the inability of a voter to speak and understand it, will not menace the state. I dislike having the flower of democracy, the right of franchise, contingent upon a linguistic qualification. A man who does not speak the tongue clearly, distinctly, well, fluently, yet seeks to become a citizen and bear the burdens as well as exercise the right and enjoy the privileges and take on the responsibility, if he seeks to do that, while he probably halts and stammers over our peculiar consonants and odd construction, may be able to voice democracy, even though in faltering accents, as well as the parlor Bolshevik who has the diploma of a university in our own tongue.

I suggest to Judge Reed that he is seeing red. This amendment is really trivial. If educational qualifications are to be imposed, let them be really educational; let them require the understanding mind and not merely the understanding speech; let them acquire the ability to read our fundamental law and explain it satisfactorily, and not merely the ability to run off its consonants and vowels, its words and paragraphs in understanding English. If we are going to have a test to cast the vote of the electorate, let it be one founded upon some intelligent, fundamental and necessary qualification of suffrage, and not upon this incidental matter which passes with the year, and which can be so readily overcome.

Mr. FISHER. Mr. Chairman: If I gather the purport of the amendment offered by Judge Reed, it goes to two matters; one as to the sex qualification of the voter. Am I right about that?

Mr. REED. Yes, sir.

Mr. FISHER. And the other as to the educational qualification of the voter?

Mr. REED. That educational qualification is with the committee. I simply added the ability to speak and understand the English language.

Mr. FISHER. Mr. Chairman: Well, to a certain extent, that is an educational qualification. I should like myself to have these two propositions separated when we come to vote on them. The qualifi-

cation with reference to sex is, in a measure, settled in our state. It is true, we have had a popular vote on that question and that the amendment conferring the franchise on women was defeated. That question has been very prominently before all the commonwealths of the Union. We have seen a very striking change in the attitude of the different states on this subject. New York, which is more like Pennsylvania, I assume, than any other state in the Union, made a complete change in its attitude. Ohio, to the west, reversed its judgment on the subject. Now then, after these expressions of popular opinion through the ballot, the matter again came before our legislature for action, and our legislature approved the suffrage amendment, so that to that extent we are all bound by the action of our legislature on the national amendment which is now before the states for action. I should like to have that segregated, for that reason, from the other part of the proposition offered by Judge Reed in his amendment.

Up in our region we have a great foreign population. I was a witness on Monday to the naturalization of a great many of our foreign citizens. They came in groups of fifty to receive the right of franchise. The question is whether or not we have been too liberal in giving the franchise to our foreign citizens. It may be that the ability to speak the language is an arbitrary qualification, as has been pointed out by our colleague from Philadelphia. In his opinion, it is too arbitrary. But so is the qualification of age, fixed at twenty-one years, arbitrary. We require a native-born citizen to live here twenty-one years before bestowing the right of franchise, in order that that citizen may have a sufficient knowledge of our institutions, our laws, our customs and our government; yet we make it much easier for the foreign-born citizen to acquire the right of franchise. Of course, this question bears again on the question of naturalization. Now, what I mean to say is this; that if we are going to have a qualification of intelligence, as suggested by the committee's report, it may well be we can afford to leave it to legislative action. Virtually, of course, real intelligence of the voter or the person participating in government cannot be gauged by his ability to speak any given language. That is so; but the universal language of our country is the English language, and no man can come here and live for the period that is required to be naturalized and apply for citizenship and be fit to vote if he does not have enough intelligence to have acquired the English language in that period. Looking at it from that feature, it seems to me that while the amendment may be somewhat arbitrary and may not be the proper gauge of the qualifications that should enter into the enfranchisement of a citizen; nevertheless, it is a safeguard which it seems to me may be put upon the qualifications of an elector with profit, and one which can work a hardship to no one, for the reason that I stated, that any person who ought to be enfranchised must have acquired the English language by residence through the period he has been living here to become a naturalized citizen.

Now, the amendment of Judge Reed, as I take it, differs from the amendment of the committee simply in its breadth. The committee proposes to allow the legislature to set up the qualifications of the voter; but Judge Reed proposes to go a step further and require this special qualification of the intelligence of the voter before he is permitted to exercise the right of franchise. Dr. Thorpe raises the

question as to who shall be the judge of the ability of the voter to speak the English language. It seems to me that ought not to present a very difficult question. Our election boards can be empowered to pass upon that qualification—a very easy matter.

It may be, as our distinguished colleague from Philadelphia says, we are seeing red on this proposition. There is a great deal of excitement; public opinion perhaps is not normal; but we have had a tremendous influx of foreign population. It took the war to awaken us to the real condition of things. We found then that one-third of the population of the United States was foreign-born, and that foreign-born population, to a very large extent, comes here without any sympathy for or knowledge of the institutions of this country, and I for one believe that it would be proper for us to place this slight safeguard to protect the franchise against persons who are not properly qualified to enter into the conduct of public affairs in this country. I want to support Judge Reed in that particular feature of his amendment.

Mr. SULZBERGER. Mr. Chairman: I need scarcely say that I am in entire sympathy with the views expressed by my colleague, Judge Gordon. The terms in which Judge Reed's amendment has been supported have only hardened by views on the subject. As the chairman of that committee knows, perhaps, better than any of us, the fact that really in America there are people of foreign extraction is not so startling a proposition as the gentleman from Indiana, Mr. Fisher, would seek to imply. The fact is that within the last three hundred years the real inhabitants of this country were the Indians, and that all the rest are derived from foreign importation, and that the present aspect of Judge Reed's amendment is that the foreign importation that comes from certain districts of England, where they speak the language that can be understood by ordinary English speakers, have a superiority over all other immigrants, including the Scotch and the Irish and some of the country districts of England. Now, the practical question raised by Mr. Thorpe is not so trivial as the gentleman from Indiana believes. We are to have here a judgment passed upon people, whether they speak the English language understandingly; and who is to pass that judgment? Why, easy enough; the election board. The election board is not a body of nine judges like the Supreme Court of the United States, but a body of hundreds and thousands of people who, I think, if tested by a competent and well-selected board, would be found to speak the English language with but moderate understanding; and making an educational test the subject of adjudication by people who have not the qualification is merely putting into our Constitution an inducement and incitement to party strife and party supremacy. As Mr. Thorpe has well put it, in the state of Mississippi the election board may put to a negro that comes forward the proposition that he shall explain article X, section 4, of the Constitution of Mississippi; and that the Constitution of Pennsylvania or Mississippi is not so easily comprehended by a casual inspection. I think those of us who have served in committee will find. Now, the idea of subjecting the franchise of a citizen to the determination of abstruse questions which puzzle the Supreme Court of the United States by a band of unlearned partisans who will immediately decide that the fellow who votes against them does not understand the Constitution! The result

will be, if you make language the test, that a person who will be expected to vote against the opinions of the election board will not speak English understandingly. Then there is this trivial question, as my friend, Judge Reed, thinks: If we were drafting a Constitution for the future alone, that is one thing. We have a right, and perhaps a duty, to prescribe limitations such as may be necessary from time to time, and we also have a right, and I think a duty, to leave it to the people of the state from time to time to speak by their legislature upon that subject; but no man has told us here how many hundreds of thousands of citizens of the United States, who have heretofore without question exercised their right of franchise, will be disfranchised; that is, they will be convicted, sentenced and punished for an offense which did not exist, of which they had no knowledge, of which they had no notice, respecting which they had no trial, and they will be deprived of a fundamental right without any of those safeguards which are the real safeguards of liberty and democracy. I confess that the amendment suggested by Judge Reed does not appeal to my sense of fairness.

Mr. PEPPER. Mr. Chairman: I understand that the questions before us are two, and that they both arise under Judge Reed's amendment. The first of them is a proposal to amend the report of the committee by restoring the word "male" as a qualification for the franchise. I think we have not treated Judge Reed fairly in the course of this discussion. I see in that proposition merely an expression of loyalty to a lost cause, and I think we should applaud the attitude that he has taken out of loyalty to that cause, even if we are unable to vote for his amendment. The second question raises a matter that is far more serious. Judge Gordon has shown us, it seems to me to the point of demonstration, that ability to speak the English language with various degrees of understanding is not a safe or wise criterion of the ability to vote intelligently. On the other hand, Senator Fisher has indicated to us something which I fancy finds us all in agreement; that is, that ability to speak and write and understand the English language is an education ideal that is well worth striving for; but, Mr. Chairman, the way in which to attain that educational ideal is by a direct, intelligent, aggressive campaign of Americanization, and not by attempting by indirection to forward an educational cause by imposing a disqualification upon the voter who has not been educated. It is a perilous thing, Mr. Chairman, to throw Americanization into politics. That is what this amendment proposes. It may well be, if this amendment prevails, a matter of political expediency in a given locality to keep the masses of people in ignorance of English. It may well be to the interest of a political party or a political combination to discourage the progress of Americanization because of the indirect effect that will be produced upon the voting statistics in that locality, according to the progress or retardation of the Americanization program. I protest, sir, against injecting the political issue into the program of Americanization, for it seems to me to be dangerous in the extreme. If we have this educational ideal before us—and I assume we all have it—the thing to do is to pursue it directly and not by this dangerous business of indirection, and I do not see how we can be in doubt upon the point discussed by Judge Sulzberger. I fancy few of us have calmly considered what it would mean at this particular time

in the history of this country and of this state to deliberately undertake to disfranchise multitudes of people who now possess the vote, by applying to them the test of ability to speak the English language. I hope, sir, that I shall not be supposed to be weak or half-hearted in my advocacy of every measure which directly stimulates the speaking and reading of English on the part of the masses of the people. I am merely protesting against what seems to me to be a most unwise interference with a very great and hopeful program.

Mr. REED. Mr. Chairman: May I say one more word and then I will say no more. I find myself in strange company. I seem to be carrying the burden of the committee's report in which they recommend an educational qualification. Mrs. Miller and I wholly disagree on the question of suffrage and agree on the question of educational qualification. My friend, Mr. Pinchot, whom I relied upon, has deliberately thrown me down, and now, alas, the beloved chairman of our own committee has repudiated me. Now, nobody is going to taunt me or coax me into making an anti-suffrage speech. I am not going to do it. I am going to stand solidly on the proposition that no man has a right to vote in the state of Pennsylvania who does not know what he is voting for, and that the way for him to know what he is voting for is to be able to speak understandingly the English language. That does not include an educational qualification. My friend, Judge Gordon, with that wonderful ability that makes him so dangerous before a jury, deliberately injected into my proposition an educational qualification. He talks about the purity of English and one thing or another. Now, there is a common-sense way to look at this thing. We do not have to put a man through the university to find out whether he knows and can speak the English language or whether he understands it. My three friends from Philadelphia come from precincts of the city where they probably do not know what it means to have masses of foreigners who do not understand the English language, who are not in harmony with the institutions of this country, who do not care anything about them, who cannot be talked to in English by people who will explain, the Americanization friends of Mr. Pepper, who can be swayed and have been swayed by foreign agitators, and have marched through the streets of our city and surrounding towns to the dread of the inhabitants, and who have only been controlled by fear of force. What I suggest will help Mr. Pepper's program. You cannot make a man study English. You cannot impress him with the beauties of Americanization—whatever that means—if he does not see something to be gained by it. If he knows he cannot vote until he can speak enough English to ask for a vote, that he can have explained to him by English speakers what the questions are then until he is able to do that he ought not to have a vote. It is unthinkable to me that men have a right to control the policies of this state who do not know enough English to know what the policies are. I do not think there are many hundreds of thousands of them, multitudes of these people, as my friends say; but whether there are or not, it does not make any difference in the principle. You set up the goal that a man cannot vote until he can speak English, and he will speak it.

Mr. FOX. Mr. Chairman: I do not want to prolong this debate unnecessarily, but for the section of the state from which I come I want to say a word in behalf of my constituents. I was glancing over

the report of the last meeting of the Commission and the few remarks that were quoted as being made by me, and I confess that if the stenographer took me correctly, Judge Reed would disfranchise me, because I certainly did not speak the English language intelligently. I am in entire sympathy with Judge Reed's endeavor to correct the evil he has in mind, but I fear this is not the best way to right it. Our naturalization court has for years required the test that Judge Reed proposes. We have a large foreign population in our district and they are invariably required not only to read the English language, but they are examined as to the provisions of the Constitution of the United States; but the particular element that I have in mind, to which I think grave injustice is done, is the Pennsylvania Dutch. We have a group of counties in the northeastern section of the state, the citizens of which were born there and lived there throughout their lives, and a large proportion of them speak Pennsylvania Dutch. They often come into our courts and we require the services of an interpreter, not so frequently now as in the earlier years of my practice; but, nevertheless, we very often have them. These men are good citizens. They are thoroughgoing Americans. They do not need any Americanization. But it would be, in my conception of it, a very grave injustice to disfranchise, the large body of citizens who are residing in that portion of the state. For this reason alone, if for no other, I would be obliged to vote against the suggestions that Judge Reed has made.

I am in entire sympathy with what my distinguished friend, Mr. Pepper, has said as to the best method of righting this. I think that we have all realized very clearly, especially during the progress of the World War, the necessity of Americanizing the foreign element, and in all the communities that I know of, that work is going forward, and going forward rapidly. So it seems to me, therefore, that the suggestion of the committee, rather than that of Judge Reed, ought to prevail.

Mr. THORPE. Mr. Chairman: I do not care to prolong this discussion, but one or two matters appear to me to be pertinent. In those states in which educational qualification has been prescribed in the state Constitution, there has been difficulty without exception, and the most conspicuous example which appears is the one in Alabama in 1868, where it was said by the Reconstruction Convention that an educational qualification should never be invoked, and that clause was inserted in the Bill of Rights, the obvious purpose being to include in the electorate a great group of Africans who could not read. That was the obvious purpose of excluding forever such a clause as required the ability to read or write. Missouri started this proposition in 1872, if my memory is correct, with the requirement of reading, which is practically the same as Massachusetts has in its amendment. But, Mr. Chairman, as Mr. Pepper has said, there are two points here which I think we should carefully distinguish. For instance, in this matter of the use of the word "male," or "female," you will recall some five or six years ago in the state of Ohio a Constitution was adopted which uses the word "white" as descriptive of the voter. It stands in the present Constitution of Ohio, and it carried by a majority of over two hundred and fifty thousand votes. That conflicts with the Federal Constitution and is thereby

null and void, for whether the word "male*" or "female" appears, this Constitution will have to square with the Federal instrument.

The voting proposition, it seems to me, is not a right at all. It is a privilege. Will the state be protected if the proposition made by my distinguished colleague from Pittsburgh carries? The fundamental proposition is: Shall we protect the state as a whole by requiring this or requiring that?

Now, as to the matter of whether that privilege or so-called right shall include males only, will depend ultimately on the Federal instrument, and whether it is put in now or put in later, or whether it is shunned entirely, will make very little difference. As to this educational qualification, I did not wholly agree with my colleagues on the committee. It seems to me that an educational qualification is a matter for immediate action by a legislative body adapting the supreme law to present conditions rather than imposing a permanent organic provision; and it seems to me that it would be perilous to insist on any educational test of any kind. Although the report is made by my committee, my sympathies are with the view of the distinguished gentleman in front of me, Judge Gordon, and I feel that what we may say as to male or female will make very little difference ultimately; but what we may say as to educational qualifications will make a difference.

Mr. FISHER. Mr. Chairman: Are we voting now on both suggestions?

The CHAIRMAN. We are voting on the entire amendment as proposed by Judge Reed.

On the question recurring.

Will the Committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee adopt the report?

Mr. REED. That includes the educational qualification, as I understand it.

The CHAIRMAN. The Chair's understanding is that the educational qualifications shall be prescribed by the legislature. The question is on the adoption of the report of the committee.

Mr. KELLY. Mr. Chairman: I do not hope to throw any additional light on the discussion we have already had, but it seems to me what we have heard against Judge Reed's amendment would apply with even greater force to the report of the committee if the educational qualification feature of the amendment is passed to the judgment of the legislature. Under this sweeping amendment to the old provision of the Constitution, the legislature in its wisdom is empowered to set up any educational qualification it may see fit. I take it that it could require, as far as this constitutional provision is concerned, if it should be adopted, that a present citizen should not have a right to vote unless he passed an examination in Latin or Greek, or whatever other standard they might set up. This educational qualification is objectionable for the reasons which have been mentioned. I think this is more objectionable than the one included in Judge Reed's amendment, because Judge Reed's opinion, as expressed in his amendment, was that a voter, in order to be entitled to cast his vote, should simply speak and understand English; whereas this proposed amendment of the committee would give the

legislature the power to require something more than that, and whether or not there is some merit in the educational qualification of a voter, the objection that Judge Sulzberger has suggested is, it seems to me, absolutely unanswerable, and that is, that in the practical application of the provision, if it should be enacted into a law, a great evil would result. We have in the county where I live certain election districts which are very, very largely of one political party. In some districts it is this party and in other districts it is that party. The majority is so great that not only is the judge of election and majority inspector of one political party, but the minority inspector also, so that we have election boards composed all of one political party, in one instance, as I have said, being one party, and in the other instance it is the other party. The result of a condition of this kind, if the matter of educational qualification should be left to the determination of the election board, would, of course, I think, in some instances, and perhaps in many instances, be to disfranchise many voters who would be qualified to vote even under such requirements as the legislature might see fit to impose. That, it seems to me, as a practical proposition, makes this provision very, very objectionable, and it seems to me that the provisions in the Constitution of 1873 should be left alone.

Mr. ALTER. Mr. Chairman: I am entirely in harmony with the suggestions which have been made by Judge Kelly. I was able, with some little hesitation, to support the amendment offered by Judge Reed, which prescribed a very moderate qualification; but it seems to me to turn over to the legislature the power which is contemplated by this proposed amendment would be absolutely reckless.

Mr. GORDON. Mr. Chairman: I want to express my concurrent views with Judge Reed and Mr. Alter. I think the qualifications for the right to vote should be expressed in the Constitution, and there alone; and it should be clear and definite, and not left to the political fluctuation of the general assembly to say from time to time who shall be qualified to vote. I think the amendment of the committee is far more objectionable than the suggestion of Judge Reed.

Mr. SULZBERGER. Mr. Chairman: I want to say that after this debate, I can do nothing more than agree with my colleague, Judge Gordon.

The CHAIRMAN. The Chair desires to call the Committee's attention to the fact that there is nothing before it except the report of Committee No. 3 on section 1 of article VIII.

Mr. REED. Mr. Chairman: I move to amend the report by striking out the words "educational qualifications" and substituting the provision that "He shall be able to understand and speak the English language."

Mr. STACKPOLE. Mr. Chairman: I second the amendment.

On the question.

Will the Committee agree to the amendment?

Mr. CUYLER. Mr. Chairman: I feel that on such an important subject as this we are proceeding too fast, and that it ought to receive further serious consideration. I therefore move that the section be resubmitted to the committee for further consideration.

The CHAIRMAN. The suggestion of the Chair is that if we get beyond second reports it will clog the Committee, and it seems to me if we can dispose of such questions here it will save time. We

have found in the committee that I happen to be a member of that the same division that exists in the committee as a whole will recur.

Mr. CUYLER. Mr. Chairman: I withdraw my motion.

Mr. REED. Mr. Chairman: I think that it is hardly fair that I should inject my suggestion into the report, and I withdraw my amendment.

Mr. STACKPOLE. Mr. Chairman. I withdraw my second. In view of the great divergence of opinion on this question, might it not be proper to lay the whole matter on the table for the present and take it up perhaps later.

The CHAIRMAN. If the Chair may express an opinion on that, the Chair feels that we have had a full discussion and are only inviting the opening of the subject anew where we can in this Committee of the Whole dispose of it finally.

Mr. PEPPER. Mr. Chairman: I move as an amendment to the report of the committee the striking out of the words "and such educational qualifications as the general assembly may superadd."

Mr. KELLY. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

It was agreed to.

The CHAIRMAN. Then the question is on the report of Committee No. 3, which would strike out the word "male" after the word "Every" and leave the section as it is in the Constitution at present with that word stricken out.

On the question,

Will the Committee adopt the report as amended?

Mr. FOX. Mr. Chairman: It seems to me that if we are to strike out the word "male," we should change the pronoun in the first, second, third and fourth clauses. I know that the chairman of the committee, in response to inquiry when the report was originally made, said it was the understanding of the committee that that covered both the male and female; but while that may be the understanding of the committee and the Commission, who shall say that it will not give rise to litigation? I therefore suggest that in place of the word "he" we substitute "such elector" in each of those paragraphs, and I so move.

Mrs. MILLER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. REED. Mr. Chairman: "Elector" means a male.

Mr. PEPPER. Mr. Chairman: This seems to me to be a good time at which to make up our minds what policy we are going to adopt in constitutional phraseology, in view of the fact that the qualification of sex is no longer a determining one in the matter of the franchise. This question is bound to recur. It seems to me we might as well leave that to the decision of a committee on style and not debate it in the Committee. For myself it seems to me that ultimately it ought to be decided that the masculine pronoun should stand rather than that we should attempt to make a substitution of other words. Judge Reed has suggested that elector is masculine, and somebody will be suggesting that electrix be used. I submit that this is one of those questions that cannot be properly debated in the

Committee at large; that we should pass the matter of this word, with the understanding that it be a subject for the committee on style, to which I suppose the whole document will ultimately have to go.

The CHAIRMAN. The question before the Committee is the motion of Judge Fox to substitute the words "such elector" for the word "he" in the first, second, third and fourth paragraphs of the section.

Mr. FOX. Mr. Chairman: I am perfectly willing to adopt Mr. Pepper's suggestion to refer the matter to a committee, and I withdraw the motion.

Mrs. MILLER. Mr. Chairman: I withdraw my second.

The CHAIRMAN. The motion of Judge Fox is withdrawn with the understanding that this language will be referred to the committee on style when such committee is created.

On the question recurring.

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE VIII, SECTION 2.

The CHAIRMAN. The next section in order for consideration is section 2 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 2. The general election shall be held biennially on the Tuesday next following the first Monday of November in each even-numbered year, but the general assembly may by law fix a different day, two-thirds of all the members of each House consenting thereto; provided, that such election shall always be held in an even-numbered year. (Amendment of November 2, 1909.)

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3, on section 2 of article VIII of the Constitution be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VIII, SECTION 4.

The CHAIRMAN. The next section in order for consideration is section 4 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 4. All elections by the citizens shall be by ballot or by such other method as may be prescribed by law; provided, that secrecy in voting be preserved. (Amendment of November 5, 1901.)

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of the Committee No. 3 on section 4 of article VIII of the Constitution be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. FISHER. Mr. Chairman: What has become of section 3?

The CHAIRMAN. Section 3, I am advised by the Secretary, has been referred to the judiciary committee.

Mr. THORPE. Mr. Chairman: Permit me to say that the report of Committee No. 3, which has just been distributed to the members, affects these matters now under consideration, and might profitably be considered in connection with our former report at this time. Otherwise, we would be going over the same ground twice.

POINT OF INFORMATION.

Mr. THORPE. Mr. Chairman: I rise to a point of information. Before considering anything further in the report you are now looking at, should you not take the following report of the committee, which was not ready for your consideration this morning, but is now on the desks of the members, as it makes some difference?

The CHAIRMAN. Then, in order to keep the records straight at the desk so that the Secretary may know, I would suggest that the chairman of Committee No. 3 offer at this time the supplemental report.

Mr. THORPE. Mr. Chairman: It is the report made yesterday, and just handed in.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress.

REPORT FROM COMMITTEE.

The CHAIRMAN. The supplemental report of Committee No. 3 will be read by the Secretary, because we will have to go back, as I see it now, and take up, in the light of this report, one clause in the first section of article VIII.

For Report No. 9, see Appendix.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

RECONSIDERATION OF VOTE ON SECTION 1 OF ARTICLE VIII.

Mr. THORPE. Mr. Chairman: I move that the vote by which the report of the committee on section 1 of article VIII was adopted be reconsidered.

Mr. VOLL. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VIII, SECTION 1.

The CHAIRMAN. The Chair will now take up the report of Committee No. 3 as to paragraph 4 of section 1 of article VIII, the report of the committee being that this paragraph shall be omitted from the Constitution.

The Secretary read the section as follows:

Section 1. Every citizen twenty-one years of age, possessing the following qualifications and such educational qualifications as the general assembly may super-add, shall be entitled to vote at all elections, subject, however, to such laws requiring and regulating the registration of electors as the general assembly may enact:

1. He shall have been a citizen of the United States at least one month.

2. He shall have resided in the state one year (or, having previously been a qualified elector or native-born citizen of the state, he shall have removed therefrom and returned, then six months) immediately preceding the election.

3. He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 1 of article VIII of the Constitution be adopted.

Mr. VOLL. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

PERSONAL TAX.

Mr. SULZBERGER. Mr. Chairman: It is true that the tax-paying qualification in a large number of cases is a mere survival, but that that survival should be construed into a hardship, I cannot, without further explanation, understand. It does tend to give at least a rudimentary personal interest to a man to say that prior to the election he must pay a tax, even if it be nominal in amount; and making a man who is a voter dwell on the thought of his relation to the state and of his duty in exercising the franchise, is, in my judgment, a good stage of political education and ought not to be abandoned unless there is a substantial reason. That substantial reason can certainly not be found in its oppressive property qualification, because a man may, without being charged with being a bloated capitalist, be capable of raising fifty cents to pay his personal tax.

Mr. GORDON. Mr. Chairman: My learned colleague from Philadelphia is very seldom wrong; but like most wise men, when he does go wrong, he goes very wrong. It seems to me the report of the committee is right and should be adopted. The lingering idea of stake in government evinced once by the holding of an estate and now by the payment of a tax has frittered itself away to the paying of a poll tax of fifty cents in the cities. It is a lingering relic of a dissipated qualification and has no other function except to be seized upon by political parties as a means of debauchery of the electorate, that portion of the electorate, alas, so numerous, that to whom even fifty cents means something. There is no substance to this. It is like an abortive organ, like a rudimentary organ, and remains simply to vex and cause pain and other difficulties. The committee evidently had this in view. I do not know who is the author of the matter, but all the reports from political committees in the large cities showing the tens and twenties of thousands of dollars paid by political bodies in order to enable poor or unwilling taxpayers to qualify by paying their tax, is an evidence that this qualification is at present a wrong and a cause of debauchery of the electoral system. I hope the committee's report will prevail.

Mr. STACKPOLE. Mr. Chairman: I received a suggestion the other day on this particular subject in a letter from a working man

who was quite vehement about some comment that had been made by a voter in respect to a poll tax, the voter having protested to such tax being imposed, and the writer suggests that this Commission should change the whole proposition and make the poll tax five dollars, and if the voter should appear at the primary election he should be rebated one dollar, and if he appear at the general election he should be rebated another dollar, so that actually in the end the tax would be three dollars as an incitement to his participation in our system of government. I offer that as an interesting suggestion from the outside.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE VIII, SECTION 4.

The CHAIRMAN. We will now resume the consideration of section 4 of article VIII, the report of Committee No. 3 being that section 4 of article VIII of the Constitution shall stand without change.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE VIII, SECTION 5.

The CHAIRMAN. The next section in order for consideration is section 5 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 5. Electors shall in all cases except treason, felony and breach of surety of the peace, be privileged from arrest during their attendance on elections, and in going to and returning therefrom.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 5 of article VIII of the Constitution be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VIII, SECTION 6.

The CHAIRMAN. The next section in order for consideration is section 6 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 6. Whenever any of the qualified electors of this commonwealth shall be in actual military service, under a requisition from the President of the United States or by the authority of this commonwealth, such electors may exercise the right of suffrage in all elections by the citizens, under such regulations as are or shall be prescribed by law, as fully as if they were present at their usual places of election.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 6 of article VIII of the Constitution be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VIII, SECTION 8.

The CHAIRMAN. The next section in order for consideration is section 8 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 8. Any person who shall give, or promise or offer to give, to an elector, any money, reward or other valuable consideration for his vote at an election, or for withholding the same, or who shall give or promise to give such consideration to any other person or party for such elector's vote or for the withholding thereof, and any elector who shall receive or agree to receive, for himself or for another, any money, reward or other valuable consideration for his vote at an election, or for withholding the same, shall thereby forfeit the right to vote at such election, and any elector whose right to vote shall be challenged for such cause before the election officers, shall be required to swear or affirm that the matter of the challenge is untrue before his vote shall be received.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 8 article VIII of the Constitution be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

BRIBERY.

Mr. PEPPER. Mr. Chairman: May I ask whether or not, in the judgment of the reporting committee, this is one of those provisions which, excellent in itself, is really a matter of legislation, having no place in the Constitution? The reason I ask the question is because scattered through the Constitution we find a variety of provisions which make a certain conduct criminal, declaring it to be attended with certain consequences. That is the case with several sections in the articles that are confided to Committee No. 4, and it occurs to me to ask here for an expression of opinion as to whether there is some good reason why even so serious an offense as this should be made the subject of constitutional enactment as distinguished from being left to be dealt with in the criminal code. I have no fixed view upon it, but it occurs to me that unless there is a special reason for dealing with misconduct in the Constitution, it ought, as a general rule, be made the subject of legislation rather than of constitutional prohibition or prescription.

Mr. SULZBERGER. Mr. Chairman: That was in the Constitution of 1873.

Mr. PEPPER. I realize that, Judge Sulzberger; but, after all, while this particular provision dates back as far as that, there are a number of instances of declaration that such and such conduct is criminal that are of very much more recent date, and when we come to those we will have to adopt some policy with regard to them which is not based on their antiquity, and it seems to me the whole question whether we are going to continue criminal prescriptions in the Constitution is really raised by the report of the committee. I do not have any decided opinion to express on the subject, but I would like to be sure that that question is before the committees when these sections are considered.

Mr. ALTER. Mr. Chairman: It seems to me the distinction is this; that where the penalty is the loss of the right to vote, then the provision should be in the Constitution. The Constitution is the only instrument the voter ought to be required to look to in order to see when and how we would forfeit his right of suffrage.

Mr. PEPPER. Mr. Chairman: That answers my question.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE VIII, SECTION 9.

The CHAIRMAN. The next section in order for consideration is section 9 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall stand without change, except the omission of the words "absolutely for a term of four years."

The Secretary read the proposed section as follows:

Section 9. Any person who shall, while a candidate for office, be guilty of bribery, fraud or willful violation of any election law, shall be forever disqualified from holding an office of trust or profit in this commonwealth; and any person convicted of willful violation of the election laws, shall, in addition to any penalties provided by law, be deprived of the right of suffrage.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 9 of article VIII of the Constitution be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. ALTER. Mr. Chairman: It occurs to my mind that to provide for a mere technical violation of some provision which the legislature may prescribe in the election law, to thus lose the right of franchise, is a very drastic and perhaps unduly harsh provision.

The CHAIRMAN. There is nothing before the Committee but the motion to adopt the report of the committee.

Mr. ALTER. Mr. Chairman: I would move—

Mr. CUYLER. You will notice the word "willful" is there.

Mr. ALTER. Mr. Chairman: Perhaps the word "willful" is some protection. I will not make a motion, but I would simply desire to call the attention of the Committee to the situation.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE VIII, SECTION 10.

The CHAIRMAN. The next section in order for consideration is section 10 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 10. In trials of contested elections and in proceedings for the investigation of elections, no person shall be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceedings except for perjury in giving such testimony.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 10 of article VIII of the Constitution be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VIII, SECTION 12.

The CHAIRMAN. The next section in order for consideration is section 12 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 12. All elections by person in a representative capacity shall be *vivi voce*.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that report of Committee No. 3 on section 12 of article VIII of the Constitution be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. May I ask the Chairman of Committee No. 3 what became of section 11?

Mr. THORPE. Mr. Chairman: Section 11 was referred to the committee on municipal government, also to the committee on judiciary.

ARTICLE VIII, SECTION 13.

The CHAIRMAN. The next section in order for consideration is section 13 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 13. For the purpose of voting no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service, either civil or military, of this state or of the United States, nor while engaged in the navigation of the waters of the state or of the United States, or on the high seas, nor while a student of any institution of learning, nor while kept in any poorhouse or other asylum at public expense, nor while confined in public prison.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 13 of article VIII of the Constitution be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VIII, SECTION 14.

The CHAIRMAN. The next section in order for consideration is section 14 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 14. District election boards shall consist of a judge of two inspectors, who shall be chosen annually by the citizens. Each elector shall have the right to vote for the judge and one inspector, and each inspector shall appoint one clerk. The first election board for any new district shall be selected, and vacancies in

election boards filled, as shall be provided by law. Election officers shall be privileged from arrest upon days of election, and while engaged in making up and transmitting returns, except upon warrant of a court of record or judge thereof, for an election fraud, for felony, or for wanton breach of the peace. In cities they may claim exemption from jury duty during their terms of service.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 14 of article VIII of the Constitution be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. May the Chair inquire for information as to what has become of sections 15 and 16?

Mr. THORPE. Mr. Chairman: Section 15 was referred to the committee on municipal government and section 16 to the committee on judiciary.

ARTICLE VIII, SECTION 17.

The CHAIRMAN. The next section in order for consideration is section 17 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 17. The trial and determination of contested elections of electors of President and Vice President, members of the general assembly, and of all public officers, whether state, judicial, municipal or local, shall be by the courts of law, or by one or more of the law judges thereof: the general assembly shall, by general law, designate the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto; but no such law assigning jurisdiction, or regulating its exercise, shall apply to any contest arising out of an election held before its passage.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 17 of article VIII of the Constitution be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IX, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of article IX of the Constitution, the report of Committee No. 4, being that this section shall stand without change.

The Secretary read the section as follows:

Section 3. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the state shall be a party.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: I move that the report of Committee No. 4 on section 3 of article IX of the Constitution be adopted.

Mr. PERRINE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IX, SECTION 5.

The CHAIRMAN. The next section in order for consideration is section 5 of article IX of the Constitution, the report of Committee No. 4 being that this section shall stand without change.

The Secretary read the section as follows:

Section 5. All laws authorizing the borrowing of money by and on behalf of the state, shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for the purpose specified and no other.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: I move that the report of Committee No. 4 on section 5 of article IX of the Constitution be adopted.

Mr. PERRINE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IX, SECTION 11.

The CHAIRMAN. The next section in order for consideration is section 11 of article IX of the Constitution, the report of Committee No. 4 being that this section shall stand without change.

The Secretary read the section as follows:

Section 11. To provide for the payment of the present state debt, and any additional debt contracted as aforesaid, the general assembly shall continue and maintain the sinking fund, sufficient to pay the accruing interest on such debt, and annually to reduce the principal thereof by a sum not less than two hundred and fifty thousand dollars; the said sinking fund shall consist of the proceeds of the sales of the public works or any part thereof, and of the income or proceeds of the sale of any stocks owned by the commonwealth, together with other funds and resources that may be designated by law, and shall be increased from time to time by assigning to it any part of the taxes or other revenues of the state not required for the ordinary and current expenses of government; and unless in case of war, invasion or insurrection, no part of the said sinking fund shall be used or applied otherwise than in the extinguishment of the public debt.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: I move that the report of Committee No. 4 on section 11 of article IX of the Constitution be adopted.

Mr. PERRINE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IX, SECTION 12.

The CHAIRMAN. The next section in order for consideration is section 12 of article IX of the Constitution, the report of Committee No. 4 being that this section shall stand without change.

The Secretary read the section as follows:

Section 12. The moneys of the state, over and above the necessary reserve, shall be used in the payment of the debt of the state, either directly or through the sinking fund, and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything, except the bonds of the United States or of this state.

On the question,

Will the Committee adopt the report?

SECTION 12 OF ARTICLE IX TO BE RE-REFERRED.

Mr. PEPPER. Mr. Chairman: May I ask that that section be withdrawn from the consideration of the Committee of the Whole and referred back to Committee No. 4? The reason for my request is that an important suggestion has come to us which we have not yet had an opportunity to consider, to the effect that it is unwise to have a provision in the Constitution requiring the automatic application of the moneys of the state over and above the necessary reserve to the payment of the debt of the state. I have no opinion on that subject, but the suggestion comes from a source which entitles it to serious consideration, and I would ask that the matter be referred back again to Committee No. 4.

The CHAIRMAN. Are there any objections? The Chair hears none.

ARTICLE IX, SECTION 13.

The CHAIRMAN. The next section in order for consideration is section 13 of article IX of the Constitution, the report of Committee No. 4 being that this section shall stand without change.

The Secretary read the section as follows:

Section 13. The moneys held as necessary reserve shall be limited by law to the amount required for current expenses, and shall be secured and kept as may be provided by law. Monthly statements shall be published showing the amount of such moneys, where the same are deposited, and how secured.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: I move that the report of Committee No. 4 on section 13 of article IX of the Constitution be adopted.

Mr. PERRINE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IX, SECTION 7.

The CHAIRMAN. The next section in order for consideration is section 7 of article IX of the Constitution. This section was referred by Committee No. 2 to Committee No. 5 and as I understand the record, the report of Committee No. 5 is that this section shall stand without change.

The Secretary read the section as follows:

Section 7. The general assembly shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual.

On the question,

Will the Committee adopt the report?

Mr. ENGLISH. Mr. Chairman: I move that the report of Committee No. 5 on section 7 of article IX of the Constitution be adopted.

Mr. PINCHOT. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

SECTION 7 OF ARTICLE IX TO BE RE-REFERRED.

Mr. PEPPER. Mr. Chairman: This, and the succeeding section are two of the sections which, at the request of Committee No. 5,

were ceded to Committee No. 5 by Committee No. 4 in order that Committee No. 5 might give them consideration, and having given them such consideration, might refer them back again to Committee No. 4 to be included in its final reports. That course has not been followed. These sections have not been referred back to our committee. We have no fixed opinions respecting the merits of the recommendation of Committee No. 5, but we should think it conducive to orderly procedure if these are not acted on by the Committee of the Whole until they come before the Committee through the committee to which they were originally referred.

The CHAIRMAN. Is there objection to the reference of section 7 of article IX back to Committee No. 4, that had it first in charge?

Mr. ENGLISH. Mr. Chairman: I am very sure that the gentleman from Philadelphia is correct in his statement, and it was only through an oversight on the part of Committee No. 5 that instead of the sections being referred back to Committee No. 4 they were reported to the Commission, and we will be very glad to follow the course originally agreed upon.

The CHAIRMAN. Are there any objections? The Chair hears none.

ARTICLE IX, SECTION 9.

The CHAIRMAN. The next section in order for consideration is section 9 of article IX of the Constitution, the report of Committee No. 5 being that this section shall stand without change.

The Secretary read the section as follows:

Section 9. The commonwealth shall not assume the debt, or any part thereof, of any city, county, borough or township, unless such debt shall have been enacted to enable the state to repel invasion, suppress domestic insurrection, defend itself in time of war, or to assist the state in the discharge of any portion of its present indebtedness.

On the question,

Will the Committee adopt the report?

SECTION 9 OF ARTICLE IX TO BE RE-REFERRED.

Mr. ENGLISH. Mr. Chairman: This same course should be adopted with regard to section 9 of article IX.

The CHAIRMAN. Is there any objection? The Chair hears none.

ARTICLE X, SECTION 2.

The CHAIRMAN. The next section in order for consideration is section 2 of article X of the Constitution, the report of Committee No. 5 being that this section shall stand without change.

The Secretary read the section as follows:

Section 2. No money raised for the support of the public schools of the commonwealth shall be appropriated to or used for the support of any sectarian school.

On the question,

Will the Committee adopt the report?

Mr. ENGLISH. Mr. Chairman: I move that the report of Committee No. 5 on section 2 of article X of the Constitution be adopted.

Mr. CUYLER. Mr. Chairman: I second the motion.

The motion was agreed to.

Mr. THORPE. Mr. Chairman: That would not prevent a modification of the language at some subsequent time if such may be found desirable?

The CHAIRMAN. I think amendments can be made at any time in the Committee of the Whole.

ARTICLE X, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of article X of the Constitution, the report of Committee No. 5 being that this section shall stand without change.

The Secretary read the section as follows:

Section 3. Women of twenty-one years of age and upwards, shall be eligible to any office of control or management under the school laws of this state.

Mr. ENGLISH. Mr. Chairman: I move that the report of Committee No. 5 on section 3 of article X of the Constitution be adopted.

Mr. PERRINE. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. CUYLER. Mr. Chairman: Why should that stand? As I understand it, under the circumstances, there will be no distinction. Why not eliminate it altogether? I move that it be stricken out.

Mr. PINCHOT. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. FISHER. Mr. Chairman: I should like to be enlightened on the reason for the motion?

FEMALE OFFICEHOLDERS.

Mr. CUYLER. Merely, Mr. Fisher, that, as I understand the situation, the Constitution as finally adopted will provide that any man or woman who is entitled to vote will be eligible to hold public office, and why should the Constitution especially provide that a woman may hold this office when she is entitled to it?

Mr. FISHER. Mr. Chairman: I assumed that was the reason, but I wanted to get it on the record.

Mr. GORDON. Mr. Chairman: I would like to ask Mr. Cuyler, because I want the fullest latitude given to the enfranchised voters to hold office on an equality, but I do not know that the conferring of the right of suffrage confers the right to hold office. I am not sure, therefore, that the elimination of this section would cure anything. It probably ought not be here, but probably something in its stead ought to be here or somewhere else, making an equality for all electors to hold any kind of office; but I do not know that the conferring of suffrage on women makes them eligible to hold all offices, and hence I do not know that the striking out of this section is a necessity. Probably it should be looked into by a committee.

Mr. CUYLER. Mr. Chairman: I assume that we do not want to have inconsistencies running through the fundamental law of the state, and if the conferring of suffrage makes them eligible to hold any office, I assume we ought to strike this out, the Constitution providing that women stand in all respects the same as men in regard to suffrage.

Mr. GORDON. Mr. Chairman: And the same thing as to jury service?

Mr. CUYLER. Mr. Chairman: I presume so.

Mr. ENGLISH. Mr. Chairman: The suggestion of the gentleman from Philadelphia was discussed to some extent in committee, and it was because of the uncertainty in our minds as to the status of women in regard to holding office that we thought it well to recommend that this section remain, so that there would be no uncertainty about her right to hold any office of control or management under the school laws of this state. I entertain the same uncertain views as Judge Gordon as to whether the granting of the right of franchise would necessarily carry with it the right to hold all offices in the state. I am not informed. The members of the committee were in doubt. We assumed that in the last analysis when the atmosphere was cleared as to the right to hold office, proper action might be taken in regard to this section, and in the meantime it was of sufficient importance to remain in the Constitution until we were certain that women did have the right to hold this class of office in addition to whatever other classes might be determined upon. That was the purpose of the recommendation.

MOTION TO RE-REFER SECTION 3 OF ARTICLE X.

Mr. PEPPER. Mr. Chairman: If it is agreeable to Mr. Cuyler and to the chairman of Committee No. 5, I should like to suggest as a substitute for the pending motion that the Committee of the Whole recommends that the section in question be referred back to Committee No. 5 to be further considered, and that that committee be empowered to consider and thereafter report upon the whole subject of the qualification of women to hold office, whether or not consideration of the subject came within the terms of the original distribution of functions to Committee No. 5.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. CUYLER. Mr. Chairman: I accept that suggestion.

The motion was agreed to.

ARTICLE XII, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of article XII of the Constitution, the report of Committee No. 3 being that this section shall be stricken from the Constitution.

The Secretary read the section as follows:

Section 3. Any person who shall fight a duel or send a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of holding any office of honor or profit in this state, and may be otherwise punished as shall be prescribed by law.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 3 of article XII of the Constitution be adopted.

Mr. CUYLER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XIII, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article XIII of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 1. No new county shall be established which shall reduce any county to less than four hundred square miles, or to less than twenty thousand inhabitants; nor shall any county be formed of less area, or containing a less population; nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 1 of article XIII of the Constitution be adopted.

Mr. PINCHOT. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XIV, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of article XIV of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 3. No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected, but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 3 of article XIV of the Constitution be adopted.

Mr. PINCHOT. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XIV, SECTION 4.

The CHAIRMAN. The next section in order for consideration is section 4 of article XIV of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 4. Prothonotaries, clerks of the courts, recorder of deeds, register of wills, county surveyors and sheriffs, shall keep their offices in the county town of the county in which they respectively shall be officers.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 4 of article XIV of the Constitution be adopted.

Mr. PINCHOT. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XIV, SECTION 6.

The CHAIRMAN. The next section in order for consideration is section 6 of article XIV of the Constitution, the report of Committee No. 3 being that this section shall stand without change.

The Secretary read the section as follows:

Section 6. The general assembly shall provide by law for the strict accountability of all county, township and borough officers, as well for the fees which may be collected by them as for all public or municipal moneys which may be paid to them.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 6 of article XIV of the Constitution be adopted.

Mr. PINCHOT. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

ACCOUNTABILITY OF MUNICIPAL OFFICERS.

Mr. PEPPER. Mr. Chairman: I am sorry to rise so often, but is there some good reason why there should be a constitutional requirement that this particular class of public servants shall be held to a strict accountability? Does that not seem to make a distinction, which, as far as I can see, is not based upon any sound reasoning, between this particular class of public servants and all those who are subject to an accounting for their stewardship? It does seem to me that this must be the survival of a provision which had its origin in some temporary condition and ought not to be a thing to be permanently embodied in the Constitution. I should like to ask the chairman of the committee to enlighten us on that subject.

Mr. THORPE. Mr. Chairman: The only answer we can make to Mr. Pepper is the answer of precedent; that it does exist in some states, and we found it here and we were unable to see any good reason for cutting it out, although I confess that I am in frank accord with the remarks of Mr. Pepper.

Mr. PINCHOT. Mr. Chairman: As the seconder of the motion to adopt this particular clause, and with due regard, I want to say that I am in hearty accord with Mr. Pepper. It seems to me that matters of this kind which are really matters of legislation ought not to be allowed to clog the articles of our Constitution, and I hope that the matter may be referred back to the committee.

The CHAIRMAN. The matter would come before the Committee now on a motion to strike out.

Mr. PEPPER. Mr. Chairman: I make such a motion.

Mr. THORPE. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. REED. Mr. Chairman: That does not do any harm. Why not let it there?

Mr. CUYLER. Mr. Chairman: It seems to raise distinctly the question of the policy of this Commission as to whether we are going to have in mind the submission to the legislature of a Constitution, the recommending of a constitutional convention, or only submitting such amendments as we regard vital. If we are going to follow the last policy, then I feel, where things do no harm one way or the other, as in this case, they ought to stay in. I feel that if we submit to the voters of the state a great many amendments it will be difficult to have the vital ones properly considered.

Mr. PEPPER. Mr. Chairman: We have been proceeding on the theory that, without determining the ultimate policy of the Commis-

sion, we should pass upon the merits of each section that comes before us for consideration. It occurs to me not merely that this section singles out a certain class of fiduciaries and calls for accountability on their part with special emphasis, whereas all persons with fiduciary duties should be subject to the same kind of accountability; but also I think there is an amendment which has already been proposed, or which is hereafter to come in from one of the committees, abolishing the fee system, and here in this section we have at least by inference reference to instances of the taking of fees and accounting for them. It seems to me that it would be unfortunate either to perpetuate this false emphasis on the accountability of a particular class of public servants or to leave in the Constitution the imputation that the collection of these fees should be made the subject of accountability until we know how far the proposal to eliminate the fee system goes.

Mr. FISHER. Mr. Chairman: It seems to me from the remarks made by Mr. Pepper, if we do anything we ought to broaden the provisions of this clause. If it is struck out the inference goes out that perhaps we are willing to be a little more lax in the accountability of public servants than we have been heretofore, and I think we do not want that impression to go out. The tendency is, and has been for some time, in this state to substitute salaries for fees, and I think that is in line with progressive legislation and with good administration of public office; but that places a greater burden on the officer who receives the salary and on the county, and I cannot see any harm in broadening the scope of the clause and making it mandatory on the legislature to pass appropriate legislation to require accountability on the part of public officers for fees received.

Mr. REED. Mr. Chairman: I move to amend Mr. Pepper's motion to the end of having it referred back to the committee.

The CHAIRMAN. May I again make the suggestion, that it be referred back to the committee, if there is some definite purpose, but it seems to the Chair that as it is on the floor we might as well dispose of it.

Mr. REED. Mr. Chairman: I withdraw my motion.

Mr. GORDON. Mr. Chairman: May I say a word in that particular to Mr. Pepper? This is in the local county offices. This section requires that the general assembly shall provide by law for the strict accountability of all county, township and borough officers, as well as for the fees which may be collected by them as for all public or municipal moneys which may be paid to them. That comprehends all subordinate officers of the county, takes in county officers, borough officers and municipal officers, and is a mere general direction that the general assembly shall provide laws regulating the accountability of the subordinate officers of the state for their taking of fees and other moneys which may come into their possession. It takes in every political subdivision of the state. It therefore is a direction on the general assembly to approve laws providing for the accountability of public officers and for the accounting for public moneys which come into their hands, and it seems to me that relieves this section from the criticism that was first passed upon it, and that it is an entirely proper constitutional provision.

The CHAIRMAN. The chair will state for the information of the Committee, of course, in all the counties there are county auditors

and that the accounts of all county officers, prothonotaries and the like, are audited.

Mr. GORDON. By virtue of general laws.

The CHAIRMAN. By virtue of general laws passed in pursuance of this section of the Constitution.

Mr. PEPPER. Mr. Chairman: In view of the very clear explanation made by Judge Gordon, I withdraw my motion.

Mr. THORPE. Mr. Chairman: I withdraw my second.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress; with the recommendation that sections 7, 9 and 12 of article IX and section 3 of article X be re-referred.

SECTIONS RE-REFERRED.

The CHAIRMAN. Sections 7, 9 and 12 of article IX and section 3 of article X are re-referred in accordance with the recommendation of the Committee of the Whole.

INVITATION TO LUNCHEON.

Mr. STACKPOLE. Mr. Chairman: The Chamber of Commerce of Harrisburg from time to time has had the pleasure of inviting our distinguished visitors to lunch with it, and I would like to extend through the Chairman, an invitation to the Commission and its Secretaries to attend luncheon with the Chamber of Commerce on next Wednesday, at 12.15 P. M., at the Penn-Harris Hotel.

The CHAIRMAN. On behalf of the Commission, and expressing the great appreciation of the Commission, the Chair accepts the invitation to lunch with the Chamber of Commerce next Wednesday.

PROPOSED AMENDMENTS.

Mr. PINCHOT. Mr. Chairman: I have here a series of amendments to the Constitution that have been proposed by the Pennsylvania Federation of Labor, and under the rule I ask that they be distributed by the Secretary to the various appropriate committees.

The CHAIRMAN. They will take that course.

RECESS.

Mr. PINCHOT. Mr. Chairman: I move that the Commission do now take a recess until 2.30 o'clock P. M.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1 o'clock P. M., the Commission took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2.30 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Commission having arrived, the Commission will be in order.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports of committees to be made at this time?

Mr. ALTER. Mr. Chairman: I think the report from Committee No. 1 will be made by Senator Fisher.

Mr. FISHER. Mr. Chairman: It is not here just at this time. It will be ready to be presented later.

The CHAIRMAN. It may be offered at any time the committee is ready.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

The CHAIRMAN. Is there any member of the Committee who has anything to offer at this time before we proceed with the calendar?

RECONSIDERATION OF VOTE ON SECTION 9, ARTICLE VIII.

Mr. ALTER. Mr. Chairman: I would like to offer a motion to reconsider the action of the Committee on one of the sections approved this morning. Would this be an appropriate time for such a motion?

The CHAIRMAN. I think so.

Mr. ALTER. Mr. Chairman: I move to reconsider the vote by which the Committee approved the report of Committee No. 3 as to section 9 of article VIII of the Constitution.

Mr. PINCHOT. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

VIOLATION OF ELECTION LAWS.

Mr. ALTER. Mr. Chairman: When this section was reached this morning, I suggested that the change recommended by the committee would seem to result in making the provision a very drastic one. The committee recommended that the section as it stands in the present Constitution be amended by striking out the concluding words, "absolutely for a term of four years," so that the section would provide that "any person convicted of willful violation of the election laws, shall in addition to any penalties provided by law, be deprived of the right of suffrage," which would mean that the person so convicted would be permanently deprived of that right, instead of being deprived "for a term of four years," as provided in the present Constitution. It was suggested when I called attention to that matter this morning that the provision of the section is "any person convicted of willful violation of the election laws," and therefore a mere technical violation which I had in mind would not be covered by the section. On consideration, however, it certainly would seem that any person convicted of a violation of an election law would have to be held guilty of a willful violation. I can scarcely see how a person so convicted could hope to have it subsequently established

or held that his violation of the act, of which he had been convicted, was not willful. Now, there are provisions in the election law, the violation of which would not involve any special moral turpitude. There are provisions in the election law for the violation of which the legislature provides penalties more or less severe, some of them not very severe, because of the violations not being specially important. Suppose, for example, the gentleman from Philadelphia, Judge Gordon, were a candidate for a state office, and suppose he seemed to be in need of some help in the district in which I live, which is not improbable, and suppose I felt inclined to help him, which I think I would, notwithstanding my general disapproval of the political organization with which he is affiliated; I would find it impracticable to be at home on election day, and I would say to my neighbor, "You go to the polls and work for Judge Gordon, and I will pay you the regular rates paid to poll watchers," and that would be done; then some one would discover I had done that, and would prosecute me for violating the election law. That would be a violation of the election law, of course, and if an information were made against me, the jury would have to convict me of a violation of the election laws.

Mr. GORDON. Yes; but you would make a powerful appeal to the clemency of the pardon board.

Mr. ALTER. I suppose so; but surely the punishment which would deprive my community of my assistance in elections from that time on to the end of my life would be out of proportion to the magnitude of the offense. Consequently, it seems to me, Mr. Chairman, that the provision in the Constitution as it now stands is sufficiently drastic. This consequence which the Constitution provides, it must be remembered, is in addition to the penalties provided by law for the violation of the election laws; but to deprive a voter of his right of suffrage for the rest of his life, would be in many cases entirely out of proportion to the seriousness of the offense. Consequently, I submit that as this is the only change the committee recommends in this section, it would be the part of wisdom to permit the section to stand as it has stood since the adoption of the Constitution of 1873.

Mr. GORDON. Mr. Chairman: I understand Mr. Alter's proposition would be that the Constitution stand as it now is, being the deprivation of the right of suffrage for four years.

Mr. ALTER. Yes, sir.

Mr. GORDON. Leaving the matter as to the candidates for office as it stands now?

Mr. ALTER. Yes, sir.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE VIII, SECTION 9.

On the question recurring,

Will the Committee adopt the report of Committee No. 3 as to section 9 of article VIII of the Constitution?

Mr. ALTER. Mr. Chairman: I move to amend the report of Committee No. 3 on section 9 of article VIII of the Constitution by providing that the section shall stand as in the present Constitution.

Mr. PINCHOT. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. Is there anything else any member of the Committee has to bring before the Committee at this time? If not, we will proceed with the calendar.

ARTICLE XIV, SECTION 7.

The CHAIRMAN. The next section in order for consideration is section 7 of article XIV of the Constitution, the report of Committee No. 3 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 7. Three county commissioners and three county auditors shall be elected in each county where such officers are chosen in the year one thousand nine hundred and twenty-three, one for two years; one for four years; and one for six years; and every two years thereafter, one for six years; and in the election of said officers each qualified elector shall vote for one person, and the person having the highest number of votes shall be elected for the term of six years; any casual vacancy in the office of county commissioner or county auditor shall be filled by the court of common pleas of the county in which such vacancy shall occur, by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 7 of article XIV of the Constitution be adopted.

Mr. MUNCE. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

COUNTY COMMISSIONERS AND AUDITORS.

Mr. REED. Mr. Chairman: What is the difference?

Mr. GORDON. Mr. Chairman: It cuts out the minority.

The CHAIRMAN. The chairman of Committee No. 3, Dr. Thorpe, is interrogated by the gentleman from Allegheny, Judge Reed, as to what changes are brought about by this amendment.

Mr. THORPE. Mr. Chairman: The judgment of the committee was that it would result in a greater experience in the body of commissioners if they were not all changed at one time. That was the primary idea.

Mr. SULZBERGER. Mr. Chairman: And the one having the highest number of votes is elected for six years. What provision is there as to the other two?

Mr. THORPE. Mr. Chairman: There is nothing about that point at all in the proposition.

Mr. SULZBERGER. Mr. Chairman: But they are two, four and six years, are they not?

Mr. THORPE. Mr. Chairman: They are elected for specific terms.

Mr. SULZBERGER. Mr. Chairman: I do not see that.

Mr. THORPE. Mr. Chairman: They are elected for the same period of service but at a different time.

Mr. FISHER. Mr. Chairman: May I ask the chairman of Committee No. 3 whether the amendment has the effect of doing away with minority representation on the board?

Mr. THORPE. Mr. Chairman: It does. It does away with minority representation and accomplishes, as was thought by some of the committee, the desired result in giving a more experienced body. When the county commissioners change under the present rule, there would be an entirely new group who would be faced by problems with which they are unfamiliar.

Mr. ALTER. Mr. Chairman: In view of the fact that the county commissioners act as a returning board at all the primary elections, might it not seem doubtful whether it is wise to abolish the provision for minority representation which has existed heretofore?

Mr. GORDON. Mr. Chairman: As I read this amendment, and I trust the chairman of the committee will correct me if I am wrong, the effect of this change is to make the county commissioner hereafter a six-year officer.

Mr. THORPE. Yes, sir.

Mr. GORDON. Beginning with the year 1923?

Mr. THORPE. Yes, sir.

Mr. GORDON. The purpose being to cover the term of the existing commissioners?

Mr. THORPE. Yes, sir.

Mr. GORDON. And after that date a county commissioner's term would be six years and one will be elected every second year, thus leaving in office always two ultimately, after the two and four-year terms, respectively, and abolishing minority representation.

Mr. THORPE. Yes, sir.

Mr. GORDON. That is the entire change?

Mr. THORPE. Yes, sir.

Mr. GORDON. Mr. Chairman: That presents two features. The first is the increase of the term of county commissioners to six years. I do not know that that is a desirable thing. I do not know any parallel for it in any minority office. There were some inferior judges who had a six-year term, the judges above those a ten-year term, the Governor has a four-year term, the mayor of the city of Philadelphia has a four-year term (which seems very long at times), and I do not know any other county or subordinate public official who has a six-year term. Why give it to the county commissioners? I doubt very much the wisdom of making the county commissioner a six-year officer. In our democracy the tendency is and ought to be against long terms. Frequency of change and the opportunity for citizens successively to be elected to the respective local offices of their county and district is a buffer against unrest and also a large preventive to an official class arising; but why a county commissioner should have that duration of office, I do not see. His duties are not technical. His duties, certainly in an ordinary county, come so close to the people, touching their local expenditures, that it is a good thing to have it turned around, and I should say that as a maximum the four-year term was adequate for a county commissioner, and probably that is even too long.

Now, on the subject of minority representation by which the minority party is allowed to have one of its members elected by the majority party abstaining from casting the full suffrage it might cast, and limiting the majority party to only a portion of the full suffrage, the principle is bad for democracy. There is no reason why an elector should not cast the full suffrage and vote for all the per-

sons to be elected to office. I speak with some hesitation, having been out of public life so long and inured in studies that are remote from the conflicts of ambition; but I am told in the city of Philadelphia and other parts of the commonwealth, this has wrought the destruction of minority parties and has resulted in the minority party wearing the badge of servitude of the majority party and really being lashed to the wheel of the chariot of the majority party, and I am inclined to think that is so anyhow. I do not think any great good has come from the minority system of representation in the executive offices of this commonwealth, and therefore I am inclined, as a member of a very small party, to wave aside this great gift of minority representation and abolish it altogether, so that there shall be no such bait before any portion of the electors; but I certainly strongly protest against creating a six-year term for a county commissioner, and I trust, therefore, that this term shall be abridged to some extent.

Mr. MUNCE. Mr. Chairman: Possibly in part I am to be held as guilty or accountable for part of that suggestion, and I feel that while possibly the change is right the term may be longer than it should be. On the other hand, we get the advantage of this changing of only one of the officers at a time. It seemed to us it would be better, as the next alternative would be a three-year term, which would subject the counties every year to the necessity of holding an election for county commissioners. Another thing, the duties of the county commissioners at the present time, and they will undoubtedly increase, are very difficult and much greater than heretofore on account of the bridge and road propaganda, road work that has to be handled through their office; and for that reason I think it is absolutely necessary for the men who hold that office to have the benefit of the experience of those who have been in the office and not at a certain period turn over as they very often do. We have done it in our own county this year, turned over the whole office to a staff of new men who have no experience whatever, and while I do not insist that the change be made to six years, I think it at least should be changed to the extent of putting one new man in at a time instead of three men. As has been said by Judge Gordon, the minority party representation does not amount to anything, because I have known counties where the minority man did not even know he was there.

Mr. THORPE. Mr. Chairman: I am not so presumptuous as to express a very great difference of opinion with Judge Gordon and his remarks on the length of service. It does not strike me as determining the value of the proposition. Of course, it is the primary doctrine of a very great, very powerful and intelligent group in this country to have short terms and frequent elections rather than long terms and infrequent elections. On the other hand, it is the fundamental theory of another great party that long terms and infrequent elections bring the better results. I think we should weigh in our minds that proposition. I think that must appeal to the individual members of this Commission. The fact that this is a minor office does not conflict with the principle that adequate service should be performed. It is closer to the people than some of the great offices in the commonwealth, and therefore should be more adequately served; and I submit to your judgment whether or not experience in this line is very much to be desired, and a six-year term is of lesser

value than a short term and a clean-up of the office and removal of officials to be replaced by officials who will be confronted with problems with which they are not familiar.

Mr. CUYLER. I feel myself in entire accord with the suggestion that the term of county commissioner should be six years. I feel the office should be conducted as a business proposition and not politically; and if you are going to get the right kind of men to fill the office, you have to give them some security of office so that when they come to make great contracts and are spending large sums of money, you have the right sort of men to see that the contracts are carried out, and not have men who must build up their political fences. You must have men who from a sound business standpoint look at the welfare of the county. I feel it would be a distinct advantage, if you got the right class of men, that they have six years so that they may see through the business which they have in hand.

Mr. PEPPER. I should like to ask for information from Judge Gordon or anyone who can inform me, whether I am right in understanding that commissioners act as a body and not individually, for it seems to me if they act as a body your arguments, that may be properly addressed to the proposition of short terms and frequent elections being desirable, have greater weight where you are dealing with an official who acts as such than where you are dealing with a group of people who act as a body. It is scarcely an important question whether the members that compose a group of three hold office individually for three, four, five or six years, it seems to me, if you have these overlapping terms and the group is a continuous group which acts as such. Of course, I am aware that in the case of courts the court acts as a group; but, however, all the individual judges act as individuals, and it might be important in their case, perhaps, that there should be short terms and frequent elections; but however it may be in the case of single officials, and in regard to them I should be inclined to share the views suggested by Judge Gordon, it does not seem to me that the consideration applies with nearly so much weight to the case of a group of three who act as a unit, and it seems to me that on the debate that has taken place here the weight of consideration is favorable to an arrangement which permits the continuity of policy through overlapping terms with individual terms of six years, rather than a shortening of the term to three years in order to obtain the overlap or the surrender of the policy of overlap in favor of what is, it seems to me in this case, a theoretical advantage of a short term. I trust the committee's report will prevail.

Mr. ALTER. Mr. Chairman: It occurs to me to make a suggestion that might result in a reasonable degree of continuity in the board of county commissioners and at the same time preserve the minority representation, and it does seem to me there may be some desirability in preserving minority representation, especially in view of the fact that the county commissioners sit as a returning board on all primary elections, and I doubt whether the abolition of this minority party representation would appeal generally to the voters of the state. For the purpose of bringing this suggestion before the Committee, I move that the report be amended so as to read as follows:

"Three county commissioners and three county auditors shall be elected in each county where such officers are chosen in the year one

thousand nine hundred and twenty-three, one for two years; and two for four years; and every two years thereafter one and two alternately for four years; and in the election of said officers each qualified elector shall vote for one person; any casual vacancy in the office of county commissioner or county auditor shall be filled by the court of common pleas of the county in which said vacancy shall occur, by the appointment of an elector of the proper county, who shall have voted for the commissioner or auditor whose place is to be filled."

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question.

Will the Committee agree to the amendment?

Mr. GORDON. Mr. Chairman: I cannot persuade myself from feeling that the six-year term was forced on the committee merely because they desired to have a continuing minority of the commissioners in office; that six years was adopted only because they could not get that succession by having one elected every three years, and if they had the thought of Mr. Alter, or could have had by reason of annual election that continuity, they would never have thought of a six year term. The President holds office for four years. Those who think that there should be a limitation to the presidential term to one term have only ventured to say he should hold office for six years. The senators of the United States are elected for six years, and that is a continuing body with one-third retiring every two years; and except for those officials I know of none who have the six-year term.

It is well enough to say that a county commissioner should have experience. I suppose he should have, but I repeat there is nothing in the character of the office which makes the experience of any real moment. Mr. Cuyler has said a county commissioner is a business man. Well, if that is so, then business men are plenty and they do not require much experience. My friend, Senator Fisher, has also a suggestion with respect to this proposition which I am going to ask him to present to the body. It strikes me as being very forceful. He is very well informed as to matters pertaining to the counties.

Mr. FISHER. Mr. Chairman: I was hoping that Judge Gordon would take the suggestion I made to him and present it in his usual clear manner. My thought was this; the office of county commissioner has grown in importance greatly during the last few years on account of our primary election legislation, and recently we have inaugurated a system of building highways and the counties are contributing to the construction of the highway system, and that gives them an importance that they never had before. Now, there are two phases of that. Our friend from Washington might argue that as an increased reason why there should be a continuing body and a longer term of service, in order that the counties could have the benefit of experience; but, on the other hand, commissioners who are entrenched in office and who might be tempted to abuse their powers could continue their body in that way by the election of one member every two years and impose their policies on the people of the county; whereas they could not do it if there was a fixed termination of their term of service. Suppose they are elected for four years, and during the four years the board of commissioners undertakes a program of road improvements or the expenditure of large sums of money or the raising of large sums of money and the creation of

bond issues as they are doing now all over the state, and the people in the county were not in sympathy with it and felt that the board was acting unwisely and not prudent, it would be better that the term should be fixed at four years. Then, if the action of the board met with the approval of the people of the county, they could very easily continue the body by re-election, and that, as a matter of fact, is being done in the counties. I know commissioners who have been serving for a great many years by re-election in that way. You get it back to that democratic principle of which Judge Gordon spoke, that the people should have the right of passing upon the action of their representatives on this very important board.

Now, Judge Gordon was very generous in waiving the right which the minority party has to representation on the board of county commissioners. We like to give the Democratic party something in this state but, of course, if they refuse to take it, it is up to Judge Gordon, representing a very important party in this body. I really believe in minority representation in this particular office. You cannot have minority representation if this amendment prevails, and I believe in minority representation here, because of the importance of the office in connection with the conduct of elections. Mr. Alter, who is familiar with that feature of the subject, has raised that question in your minds. I seem to me that there is a strong reason under the existing primary election law for continuing minority representation in boards of commissioners.

Mr. GORDON. Mr. Chairman: May I ask Senator Fisher a question? In the counties what officials are the most potent in determining the expenditures of the county and the amount necessary to be raised by taxation?

Mr. FISHER. The county commissioners, beyond question.

Mr. CUYLER. Do we vote on the question as a whole?

The CHAIRMAN. The motion before the Committee is the motion of Mr. Alter to amend the report in the respect pointed out by his amendment, which it would possibly be better for Mr. Alter to read, in order that the Committee may understand just what the amendment is.

Mr. ALTER. Mr. Chairman: The amendment reads as follows:

"Three county commissioners and three county auditors shall be elected in each county where such officers are chosen in the year one thousand nine hundred and twenty-three, one for two years; and two for four years; and every two years thereafter one and two alternately for four years; and in the election of said officers each qualified elector shall vote for one person; any casual vacancy in the office of county commissioner or county auditor shall be filled by the court of common pleas of the county in which said vacancy shall occur, by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled."

The CHAIRMAN. The understanding of the Chair is that its effect is to destroy minority representation.

Mr. ALTER. Mr. Chairman: This would preserve minority representation, because when there are two to be voted for each voter could only vote for one.

Mr. SULZBERGER. Mr. Chairman: I would like Mr. Alter to make it a little more clear to the meeting. What is the advantageous

difference between the constitutional article as it stands and the proposed amendment?

Mr. ALTER. Mr. Chairman: The only difference, I think, is this; that instead of having all three county commissioners elected at one time you would always have at least one holding over; sometimes one and sometimes two.

Mr. CUYLER. Mr. Chairman: Would it be possible to have the two questions voted on separately; in other words, to vote upon the question whether the terms should be six or four years, and separately upon the question as to whether there would be the minority representation? For one I am very much in favor of minority representation, and I think six years ought to be the term.

The CHAIRMAN. I do not see how, under any parliamentary rule, that could be done under the resolution as offered by Mr. Alter without further amendment.

Mr. CUYLER. Mr. Chairman: Then I will move as an amendment that the term be made six years.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the amendment to the amendment?

Mr. McCORMICK. Mr. Chairman: Could this question be withdrawn and could we vote on two questions, one on the question of four years, and the other minority representation?

The CHAIRMAN. That is a term of four years and minority representation as the Constitution now stands?

Mr. McCORMICK. Mr. Chairman: As it stands today and striking out minority representation; but in the amendment proposed by Mr. Alter I am opposed to minority representation and I would like to vote for the four-year proposition.

The CHAIRMAN. That could be arranged, on the four-year proposition, by striking out the provisions as to minority representation.

On the question recurring,

Will the Committee agree to the amendment to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee agree to the amendment?

Mr. McCORMICK. Mr. Chairman: I would like to amend Mr. Alter's amendment to do away with minority representation.

Mr. ALTER. Mr. Chairman: Mr. McCormick's suggestion then, if I understand the purpose of it, would be to strike out the words "and in the election of said officers each qualified elector shall vote for one person."

Mr. McCORMICK. Mr. Chairman: I move the amendment of Mr. Alter's amendment by striking out the words "and in the election of said officers each qualified elector shall vote for one person."

Mr. GORDON. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the amendment to the amendment?

It was not agreed to.

On the question recurring?

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?
It was adopted.

ARTICLE XVI, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article XVI of the Constitution, the report of Committee No. 4 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 1. All existing charters, or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: I move that the report of Committee No. 4 on section 1 of article XVI of the Constitution be adopted.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVI, SECTION 2.

The CHAIRMAN. The next section in order for consideration is section 2 of article XVI of the Constitution, the report of Committee No. 4 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 2. The general assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: I move that the report of Committee No. 4 on section 2 of article XVI of the Constitution be adopted.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVI, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of article XVI of the Constitution, the report of Committee No. 4 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 3. The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the general assembly from taking the property and franchise of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: I move that the report of Committee No. 4 on section 3, article XVI of the Constitution be adopted.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVI, SECTION 5.

The CHAIRMAN. The next section in order for consideration is section 5 of article XVI of the Constitution, the report of Committee No. 4 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 5. No foreign corporation shall do any business in this state without having one or more known places of business and an authorized agent or agents in the same upon whom process may be served.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: I move that the report of Committee No. 4 on section 5 of article XVI of the Constitution be adopted.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVI, SECTION 8.

The CHAIRMAN. The next section in order for consideration is section 8 of article XVI of the Constitution, the report of Committee No. 4 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 8. Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction. The general assembly is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers or otherwise; and the amount of such damages in all cases of appeal shall on the demand of either party be determined by a jury according to the course of the common law.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: I move that the report of Committee No. 4 on section 3, article XVI of the Constitution be adopted.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XIV, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article XIV of the Constitution, the report of Committee No. 3 being that this section shall be amended by omitting the words "coroners" and "surveyors" from the section.

The Secretary read the proposed section as follows:

Section 1. County officers shall consist of sheriffs, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurers, auditors or controllers, clerks of the courts, district attorneys, and such others as may from time to time be established by law; and no sheriff or treasurer shall be eligible for the term next succeeding the one for which he may be elected.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 1 of article XIV of the Constitution be adopted.

Mr. MUNCE. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

CORONERS AND SURVEYORS.

Mr. REED. Mr. Chairman: May I ask why?

The CHAIRMAN. The gentleman from Allegheny, Mr. Reed, interrogates Dr. Thorpe.

Mr. THORPE. Mr. Chairman: I can only say that in conference and consultation by the committee it was thought that these officials were superfluous; their duties were performed by other officials; and on account of some difference of opinion it was thought best to bring the matter before the Committee of the Whole.

The CHAIRMAN. The Chair's understanding of the amendment proposed is that it would strike out of the list of constitutional county officers the office of coroner and the office of county surveyor.

Mr. REED. Mr. Chairman: I would like a little more information about the source of Dr. Thorpe's knowledge on that subject. The coroner in our county is a pretty busy fellow. He is a county official and ought to be. I do not know what a county surveyor is; we haven't any.

The CHAIRMAN. You have in your county, I think, a special act of assembly covering county surveyors. I have had that before me since I have been Attorney General.

Mr. REED. Mr. Chairman: Yes, sir.

Mr. GORDON. Mr. Chairman: I cannot speak for this committee further than the chairman has disclosed its purpose. I assume the intent to be this, that so long as the Constitution prescribes the coroner as a county officer, the coroner must be continued as a county officer and cannot be gotten rid of except by an amendment to the Constitution; but by leaving out the word "coroner" in the designation in the Constitution of what shall constitute county officers, it is left for legislative determination, and could be abolished in any county if thought proper. Is that the purpose?

Mr. THORPE. Yes, sir.

Mr. GORDON. Mr. Chairman: As to whether this is a good purpose I express no opinion. We have a coroner in our county who is a very busy and very important man. It may be in some counties he has practically slidden into desuetude, largely depending on the number of murders committed in the county, but after the war we may expect that the peace and quiet of those regions will be disturbed sufficiently to give dignity to the office.

Mr. FISHER. Mr. Chairman: May I ask the chairman of Committee No. 3 whether this amendment, if adopted, would abolish these two offices without further legislation?

Mr. THORPE. Mr. Chairman: It is so intended.

Mr. FISHER. What would be the immediate effect?

Mr. THORPE. I cannot answer.

The CHAIRMAN. The Chair would ask Dr. Thorpe a question. Who in the county organization would make inquiry as to suspicious or sudden deaths? Where would that power be lodged?

Mr. THORPE. Mr. Chairman: It seems to be vested in the district attorney.

The CHAIRMAN. It occurs to the Chair that the district attorney has no such power.

Mr. THORPE. Or justice of the peace.

The CHAIRMAN. The Chair may make a further observation. In the county in which I live the coroner not only inquires into murders,

but into all deaths by violence, to see what the real surroundings are, and it has worked out advantageously. The Chair does not desire other than to state facts and not to get into debate from the Chair. There are some provisions in the law as to the duties of county surveyors in connection with the patenting of land, that I have been brought in contact with recently, and therefore they do have a function to perform.

Mr. FISHER. Mr. Chairman: I apologize for being on my feet so often, but it seems to me that this office of coroner ought not to be disturbed. Through our industrial regions there are a great many cases which need special investigation officially. From time immemorial this duty has devolved upon the coroner. If you abolish the office you must place those duties somewhere, and if somebody ought to perform those duties, why not leave it where the ancient law has placed it? Unless there is some very good reason for shifting the duties which must inure to some other function, I can see no reason for abolishing this as a constitutional office.

Now, it is true the office of county surveyor is one that has gone into innocuous desuetude, more or less. But at the time public lands were taken up it was the duty of the county surveyor, of course, as all these lawyers know, and we all know, to survey the warrants and make return of them to what we now sometimes think the more or less useless office of Secretary of Internal Affairs—we may change our views—but that is where the reports were made. Now, of course, there is a very small amount of public land left, but every once in a while there arises some question affecting land titles which must be referred to the county surveyor. Up in our region where there has been a great deal of activity in mineral lands, the county surveyor has had a good many functions to perform. Of course, in an agricultural region, where things are more settled, and where there is not so much change in titles, perhaps the office is more or less useless. But is there any good reason for abolishing this office, and, if you do abolish it, who would perform the functions?

Mr. Chairman, I move that the report of Committee No. 3 on section 1 of article XIV of the Constitution be amended by substituting for the committee's report the section as it now stands in the Constitution.

Mr. CUYLER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE XIV, SECTION 5.

The CHAIRMAN. The next section in order for consideration is section 5 of article XIV of the Constitution, the report of Committee No. 3 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 5. All county officers shall be paid by salary only for services performed for the county, state or any political subdivision of either, and all laws providing any other form of compensation for such services are hereby declared to be repealed.

On the question,

Will the Committee adopt the report?

Mr. THORPE. Mr. Chairman: I move that the report of Committee No. 3 on section 5 of article XIV of the Constitution be adopted.

Mr. MUNCE. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

COMPENSATION OF COUNTY OFFICERS.

Mr. SULZBERGER. Mr. Chairman: I would like to ask the chairman of Committee No. 3 what reason there is for leaving out a possibility or contingency of fees being paid for services and paying those fees into the treasury of the state, as in the present Constitution.

Mr. THORPE. Mr. Chairman: The implication was that the fees would be so paid. A possible objection to this proposition to abolish the fee system and substitute the salary system is whether persons in office would be affected thereby. Is it not proper to consider that the schedules of Constitutions usually state when the provisions in the Constitution take effect, and who are exempted and excepted from their operation? It would not be necessary to put that in here but it could be put in some other article, because doubtless there are other changes which will require a similar policy.

Mr. FOX. Mr. Chairman: I would like to ask the chairman of Committee No. 3 whether they considered the wisdom of incorporating in this amendment that the salary shall be fixed by the general assembly?

Mr. THORPE. Mr. Chairman: The reading of the substituted section "subdivision of either" is the question involved, whether or not that would cover municipalities. That should be looked into to see whether it does, in the opinion of the committee.

Mr. FOX. Mr. Chairman: The thought I had in mind in asking that question was whether this provision would make it mandatory to pay justices of the peace, constables, and all minor officers in townships, boroughs and cities of the state. If it is not comprehensive enough to include that in the terms "political subdivision," I think we ought to take thought before adopting this in its present form.

The CHAIRMAN. This is a very important question. I do not know just how it will work out in some of the very small counties of the state. For the information of the committee, the Chair would state that at the last session of the legislature a bill was passed fixing the salaries of district attorneys in all counties of the state, so that that legislation has been started. There had been an act prior to that also on the same subject.

Mr. ALTER. Mr. Chairman: As I understand this amendment, it would entirely discontinue the payment of any fees to the register of wills for the collection of inheritance taxes. It might be questioned whether it is sound public policy to take away from the officer to whom the law commits the duty of collecting inheritance taxes all incentive to diligence in making such collections. It is doubtful whether it is not better to provide a reasonable commission, and I think the commission now established by the act of 1919 probably is a reasonable commission, than to compensate him by salary only, thereby removing all the incentive to extra diligence. The state

might lose more by taking away that incentive than it would gain by taking away the commission.

The CHAIRMAN. Also for information, the Chair would state that at the last session of the legislature this question of the payment of fees to the register of wills was very thoroughly considered and acted upon, first with the idea of abolishing the fees, because of a case arising in Philadelphia with the register of wills. Then, it became manifest to those charged with the responsibility, of which I was one, that, if that policy was adopted, the loss in revenue to the state was going to be very great; so that this is a very important question on the revenue side.

Also for information, possibly, all the lawyers on the Commission know, that after a certain amount of the fees of the county officers are put into their pockets a certain proportion of the fees goes back into the treasury, and that all county officers must earn their salaries as now fixed, out of the fees, or else they do not get their full salaries, as I recall the law. In the counties where there is complete audit, as in my county, the avails that go into the treasury are quite large.

Mr. GORDON. Mr. Chairman: Do I understand that if this amendment were adopted the legislation of the last session to which you refer would be nullified?

The CHAIRMAN. I am afraid so. That is what I am afraid of, sir. I have sent for the acts of assembly so that I may speak by the book. It seems to me that it might be nullified.

Mr. GORDON. Mr. Chairman: I am going to read this proposition of the committee again:

"All county officers shall be paid by salary only for services performed for the county, state or any political subdivision of either."

If one were called upon to interpret that provision, he would be confronted first with the proposition whether that would be a single salary which was to cover all these services, or whether he might receive a salary from the county, a salary from the state and salaries from any other subdivision of the state for which he performed services. I do not know what the intention of the committee was, but that language permits that possible interpretation; and I think, with the Chairman, that the adoption of it would certainly nullify the legislation passed this last year, giving certain compensation for certain collections in addition to salary.

The CHAIRMAN. Also for the information of the Committee, so that you may have that fact before you, then the only other way that the state can collect inheritance taxes is by appointing a collector in each county to do it, which, of course, would involve the state in very much greater expense than is involved now by collecting such taxes through the register of wills.

Mr. THORPE. Mr. Chairman: The gravity of the subject was not lost in the minds of the committee, of course, and the proposition here is to evoke the judgment of the Committee of the Whole. As to the remarks of my learned colleague from Pittsburgh, Mr. Alter, as to the incentive to the performance of public duty, is a fee any more incentive than a salary? What is an incentive to performance of public duty? Must we give a fee to inspire them or will we secure the better service by a salary? I have an idea, Mr. Chairman, that the fee system is a relic of a vicious time and that the public sentiment is set against the fee system, as a system, and is hostile to it;

but it would be very gratifying, indeed, if the members of the Committee who are particularly familiar with the aspects of this question from their long service in public life would throw light on the subject.

The CHAIRMAN. I have before me the act of 1919, and in order that the Committee may see what the provisions of the act are with reference to the collection of inheritance taxes, which would be abolished by this section, I will read it:

"Section 21. The registers of wills, upon their filing with the Auditor General the bond hereinafter required, shall be the agents of the commonwealth for the collection of the said tax in the case of resident decedents. For services rendered in collecting and paying over the same, they shall be allowed to retain for their own use, upon the gross amount collected during any year, five per centum upon the tax collected, if such tax shall amount to a sum of fifty thousand (\$50,000) dollars or less; three per centum on the amounts collected in excess of fifty thousand (\$50,000) dollars and not exceeding one hundred thousand (\$100,000) dollars; one per centum on the amounts collected in excess of one hundred thousand (\$100,000) dollars and not over two hundred thousand (\$200,000) dollars; and one-half of one per centum of the amounts collected in excess of two hundred thousand (\$200,000) dollars and not over one million (\$1,000,000) dollars; and one-quarter of one per centum on the amounts collected in excess of one million (\$1,000,000) dollars."

It strikes my mind that all that legislation would be rendered nugatory if this amendment prevailed, and this is very important as far as the commonwealth is concerned.

Mr. CUYLER. Mr. Chairman: Can we have some information as to the practice in other states? I have in mind that the fee system is becoming obsolete throughout the country. I think you will find it is being eliminated.

The CHAIRMAN. One of the difficulties is that other states do not have the same system of collection of state taxes as our commonwealth. A great many forms of state taxation are collected in this state through county agencies; hunters' licenses, fishing licenses, and all that sort of thing, are collected through the agencies established in the counties.

SECTION POSTPONED.

Mr. FISHER. Mr. Chairman: In view of the importance of this proposition and the lack of information which we seem to have of its effect, I move that further consideration of it be postponed until tomorrow.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. That completes consideration of the calendar so far as the calendar has been made up to this time.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress.

REPORT FROM COMMITTEE.

The CHAIRMAN. Have any of the Committees anything to report at this time?

Mr. FISHER. Mr. Chairman: I am directed by Committee No. 1 to submit the following report, copies of which are on the desks of the members.

For Report No. 10.see Appendix.

ADJOURNMENT.

Mr. REED. Mr. Chairman: I move that we adjourn until tomorrow morning at 10 o'clock, and that tomorrow's session shall adjourn at 1 o'clock P. M.

Mr. SULZBERGER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 4 o'clock P. M., the Commission adjourned until tomorrow morning at 10 o'clock.

Senate Chamber,
Thursday, January 8, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—15.

Alter, English, Fisher, Gordon, McCormick, Miller, Munce, Pepper, Pinchot, Reed, Staekpole, Sulzberger, Thorpe, Warburton, Schaffer (Chairman).

ABSENT—10.

Carson, Connelly, Cuyler, Fox, Kelly, Perrine, Sharpless, Smith, Tyson, Voll.

The CHAIRMAN. A quorum of the Commission being present, the Commission will proceed with its business.

JOURNAL APPROVED.

Mrs. WARBURTON. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mrs. MILLER. Mr. Chairman: I second the motion.

The motion was agreed to.

REPORTS FROM COMMITTEES.

The CHAIRMAN. The first thing in order is reports from committees.

Has Committee No. 1 anything to report at this time?

Mr. ALTER. Mr. Chairman: The report of Committee No. 1, following the report submitted by Senator Fisher yesterday afternoon, is printed and in the files.

The CHAIRMAN. The report will be received.

For Report No. 11, See Appendix.

The CHAIRMAN. Has Committee No. 2 anything to report at this time?

Has Committee No. 3 anything to report?

Has Committee No. 4 anything to report?

Mr. PEPPER. Mr. Chairman: Committee No. 4 has no report at this time.

The CHAIRMAN. Has Committee No. 5 anything to report?

Mr. ENGLISH. Mr. Chairman: Committee No. 5 has no report to make at this time.

The CHAIRMAN. Has any member of the Commission anything to offer at this time?

TIME OF MEETING.

Mrs. MILLER. Mr. Chairman: If this is the proper time, I would like to move that hereafter the Commission meet not later than ten o'clock A. M. of the first day on which it is called. The Pittsburgh members arrive here either the night before or at five o'clock in the morning of the first day of the session, and we are here until noon. I believe that we could finish the business in two days if we would start promptly on the first day the Commission is called.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the Commission agree to the motion?

Mr. FISHER. Mr. Chairman: In this matter, of course, the male members of the Commission want to defer to the ladies. We have now heard from Pittsburgh as to the convenience of Pittsburgh. We would be pleased to hear from Philadelphia as to whether that suits their convenience.

Mrs. Warburton. Mr. Chairman: Yes, it does.

The CHAIRMAN. Mrs. Warburton accommodates herself to Mrs. Miller. The two sections of the state are in harmony.

On the question recurring,

Will the Commission agree to the motion?

It was agreed to.

The CHAIRMAN. Has any other member of the Commission anything to offer at this time?

CHART.

Mr. PEPPER. Mr. Chairman: The Secretary has secured and has caused to be displayed in an adjacent room a chart which presents graphically the relationship between the different departments of the state government. A brief study of that chart suggests that specific attention should be given to the problems of the relationships between the different departments—the revision of the working relationships and the organic relationships between the different state activities. In the distribution of the functions of committees, I think that subject has not been referred to any one of them. The distribution has involved merely the parceling out of the various articles of the Constitution. This is a question which may cut in cross-section across many or all of the articles. I, therefore, move you, sir, that in the discretion of the Chair either a new committee be appointed or a reference be made to an existing committee to the end that careful consideration should be given to the existing relationships between the state departments and the various state agencies, with instructions to report to the Commission such recommendations as they may have in the premises.

Mr. PINCHOT. Mr. Chairman: I second the motion.

On the question,

Will the Commission agree to the motion?

NEW COMMITTEE.

Mr. FISHER. Mr. Chairman: It seems to me that motion brings up the question of the relation between the different provisions of the

Constitution with respect to the entire state government, and I would suggest, if it meets Mr. Pepper's approval, that he amend his motion to make the committee consist of the chairman of the several existing committees.

Mr. PEPPER. Mr. Chairman: I am entirely willing to defer to Senator Fisher's suggestion, or to leave it in the hands of the Chair, as may be thought better. May I add, by way of amendment then to this proposal that, in the discretion of the Chair, the matter in question be referred for consideration either to one of the existing committees or to a committee to be appointed by the Chair, and if, in the latter event, the Chair sees fit to appoint the chairmen of the existing committees, it would be within the scope of the motion.

Mr. PINCHOT. Mr. Chairman: The amendment is satisfactory to me, and I therefore second Mr. Pepper's motion as amended.

On the question,

Will the Commission agree to the motion as amended?

It was agreed to.

The CHAIRMAN. The Chair appoints as that committee the chairmen of the existing committees.

Is there any other matter to come before the Commission at this time? If not, and if there is no objection, the Commission will resolve itself into the Committee of the Whole and proceed to the consideration of the calendar.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

ARTICLE XIV, SECTION 5. —

The CHAIRMAN. We will resume the consideration of section 5 of article XIV of the Constitution, which under the motion made yesterday was postponed for further consideration until today, the report of Committee No. 3 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 5. All county officers shall be paid by salary only for services for the county, state, or any political subdivision of either, and all laws providing any other form of compensation for such services are hereby repealed.

On the question recurring,

Will the Committee adopt the report?

COMPENSATION OF COUNTY OFFICERS.

Mr. PEPPER. Mr. Chairman: I take the liberty of suggesting to the chairman of the committee that, in view of the fact that punctuation is not a part of the Constitution, there may be possibly a misapprehension in the construction of this section, if the word "only" is left after the word "salary" instead of being placed before it. As it reads now, it is "salary only" for such services, if you choose to read it that way; whereas, if you put it "only by salary," it makes it clear that the limitation is to compensation through the medium of a salary, and not otherwise.

Mr. THORPE. Mr. Chairman: That would be a very proper amendment.

The CHAIRMAN. Are there any other remarks on the question? The Chair desires to call to the Committee's attention that this is a very vital proposition to the state government.

Mr. THORPE. Mr. Chairman: Will you permit me to raise the question that we should be very gratified if certain members who are present this morning would examine this matter a little more carefully; it is so important. We would greatly appreciate as a committee—and I am speaking with honesty in the matter—if this should be done, because it is too serious to pass off without keen analysis.

The CHAIRMAN. There is no motion before the Committee except the motion to adopt the report of Committee No. 3.

SECTION POSTPONED.

Mr. REED. Mr. Chairman: I move that the matter be postponed until the next meeting of the Commission.

Mr. McCORMICK. Mr. Chairman: I second the motion.
The motion was agreed to.

ARTICLE III, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of article III of the Constitution, which was originally reported to stand without amendment, the supplemental report being that it shall be amended.

The Secretary read the proposed section as follows:

Section 3. The general assembly may from time to time adopt codes, compilations for revision of the existing statutory laws of the commonwealth, or any part thereof, but no alterations, amendments or additions to such codes, compilations or revisions, and no other bills, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title.

GENERAL MOTION.

The CHAIRMAN. In order to save space in the Journal, it has been suggested by one of the parliamentarians of the body that without a formal motion each time from the chairman of the committee for adoption, it be considered as a general motion following the presentation of the report. I think it will save space in the Journal. So the Chair, each time, will put the motion as a general motion.

ARTICLE III, SECTION 3.

On the question,
Will the Committee adopt the report?

TITLE OF BILLS.

Mr. SULZBERGER. Mr. Chairman: May we have some explanation of the purpose of this amendment?

Mr. ALTER. Mr. Chairman: The purpose of the amendment is to permit codification of particular branches of the law so as to gather together the legislation on one subject, or perhaps on several related subjects, into one act of assembly. To do this now is difficult by reason of the constitutional requirement that no law shall be passed having more than one subject. I might state that recently in the work of the commission appointed to codify and revise the laws

relating to decedents' estates this difficulty was encountered, and it appeared to be necessary to put in seven separate acts of assembly that which otherwise would have very properly and conveniently been put in one act, and that is the sole purpose, as I understand it, of this proposed amendment.

Mr. SULZBERGER. Mr. Chairman: That would leave in my mind at least one doubt. "The general assembly may from time to time adopt codes, compilations or revisions of the existing statutory laws." Then you finally say that changes in that code must be clearly expressed in the title. But suppose, in the course of the revision, there is a change of the existing law. Is that case provided for by your amendment?

Mr. ALTER. Mr. Chairman: This section does not relate to what must be expressed in the title. This is a section which relates to the necessity of having only one subject in the bill.

Mr. SULZBERGER. Mr. Chairman: There is a purpose in the clause referring to what shall be clearly expressed in the title, and I thought that purpose was that, if there was to be a change in the law, the members of the legislature should be notified of the impending change by something in the title. Now, whenever such a revision or code or compilation has been passed, and something is proposed to be altered in it substantially, then that proposed alteration must specify its purport in the title. But in an original codification or revision, suppose there is a substantial change of the present law which they are codifying, there is no obligation to mention that in the title.

Mr. ALTER. Mr. Chairman: I think the point suggested by the gentleman from Philadelphia is well taken. This resulted from weaving into the existing section that which the committee desired to accomplish, and I apprehend their attention was not directed until now to that. This provision for having the subject clearly expressed in the title would not apply to the codifications.

Mr. SULZBERGER. Mr. Chairman: Would the omission of the word "revisions" in the second line avoid the objection?

Mr. ALTER. Mr. Chairman: I think it would be better to make a little change in the concluding language, because it is desirable, when you are codifying or compiling, that at the same time you should make necessary revisions.

The CHAIRMAN. For the information of the Committee, the Chair would state that one of the purposes of this amendment—the Chair was a member of the committee that drafted it—is to enable a complete revision of the statutory law of the state to be made, so that, instead of having seven volumes of the digest of laws that we now have, and at the end of ten years nobody knows how many we will have, a commission could be appointed whose duty it would be to compile and revise the existing statutory law, and then, in accordance with the Massachusetts system, if I understand the Massachusetts system, that could be done periodically, in terms say of ten years, so that there would come into the legislature for adoption a complete revision of the statutory law of the state.

Mr. ALTER. Mr. Chairman: May I suggest an amendment, the adoption of which I move: Strike out the word "which" in the line next to the last line, and substitute for that the words "and in every case the subject of the bill," so that it will read "and no other bills,

except general appropriation bills, shall be passed containing more than one subject, and in every case the subject of the bill shall be clearly expressed in its title."

Mr. GORDON. Mr. Chairman: I think the chairman of the committee surrenders to the criticism of my learned friend, Judge Sulzberger, too readily. I think the report of the committee as it stands is correct. Its purpose is to allow, as you have stated, sir, a general revision of the statutory law of the commonwealth, and the adoption of a code or compilation or a general revised body of statutes. Now, to require such a revision to contain in its title a table of each particular change made in the statutory law would make a title as long as the moral law and pretty nearly as difficult. This section, therefore, is one meant to allow such a general revision of the entire statutory code to be made by a general title which shall not contain a table of contents, even a table of contents of changes; but, after the adoption of such a code, after the adoption of such a compilation or revision of the statutory law of the commonwealth, then no change may be made without having the amending or altering statute recite specifically the change which is made. It seems to me the report of the committee as it stands accords with good legislative practice.

Mr. FISHER. Mr. Chairman: Judge Gordon has expressed the thought of the committee while it was considering this subject. The honorable Chairman did not happen to be present at that time. At present, the limitation which is placed upon all bills requires that the subject be expressed clearly in the title. The thought of the committee was to remove from that limitation the codification of the laws freed altogether from any restrictions with respect to the title, but retain that restriction when it comes to the amendment of any portion of the code, or when separate subjects of legislation are presented for the action of the legislature. Judge Gordon has grasped the thought of the committee.

Mr. SULZBERGER. Mr. Chairman: What I said was not in the way of criticism, as my friend Judge Gordon, seems to think. It was merely an inquiry, and he says the gentleman from Pittsburgh construes that inquiry to be a hostile criticism, and accepted it. I agree with Judge Gordon that, when the legislature does hand us a code or compilation of all the statutes, that is notice enough to read it all.

Mr. ALTER. Mr. Chairman: The only difficulty is that as the section stands there is no requirement whatever for these codification acts to have any title.

Mr. SULZBERGER. Mr. Chairman: Why not?

Mr. ENGLISH. Mr. Chairman: May I ask the committee or some one what the effect would be of omitting from a codification a particular line of subjects or existing statutory provisions? Let us suppose, for instance, that the legislature undertook to codify in a single statute the law relating to cities. What would be the effect of omitting from the codification, let us say, the provision with regard to the right of eminent domain? Would not the effect of the omission be to repeal it; and if that is so, are not we in danger, since there is no limit to the number of subjects that may be included in a single codification of re-creating the very conditions that it was the purpose of this section in the Constitution of 1873 to correct? You

are having a lot of subjects collected in a single statute, and by implied repeal, perhaps getting something out of the statute law of the state, without specifically calling to the attention of the legislature or to interested parties the fact that such an omission would be effected.

Mr. GORDON. — Mr. Chairman: The provision of the present Constitution requiring but one subject in a bill, and that to be clearly expressed in its title, is not intended for public consumption or public benefit. It is purely a legislative rule, intended to operate upon the legislature. The vice which it was aimed at was a bill having but one title and expressing but one subject but containing in its body two or more subjects, so that the legislators looking at their calendar and observing the title of a bill would not be admonished as to what its real contents were. To prevent that in the passage of bills through the Houses, it was required by the existing law that every bill should contain but one subject, and that subject should be clearly expressed in its title. Now, as I see it, that is a legislative regulation for the guidance and help of legislators. It is not indispensable. This report of the committee changes that legislative rule with respect to codification, general revisions and general compilations. As to those subjects, the legislature will have been notified by the mere title that it is a codification, by the mere title that it is a compilation, a general revision, that the whole law upon that subject comes within the purview of the statute, and, therefore, the object of codification will be accomplished by the general title of the bill. And then, in reply to the gentleman from Erie, Mr. English, every member of the legislature will know that he will have to take his soundings all along the channel, and to know exactly what the changes are in the general law in all respects he will have to read the bill at length.

The CHAIRMAN. Will the gentleman from Allegheny, Mr. Alter, take the Chair?

MR. ALTER IN THE CHAIR.

Mr. SCHAFFER. Mr. Chairman: The purpose of this amendment has been stated, and I thought possibly I might make an explanation with reference to it and might a little more clearly show the Committee what the situation is. A number of years ago, when I was state reporter, I spent several days at the West Publishing Company in St. Paul, which is, as all of you who are familiar with legal literature know, the greatest legal publishing house in the country. My days there were spent with the editor-in-chief of the West Publishing Company, who, maybe you would be interested to know, was Daniel Webster's grandson. I was concerned, as he was, in the subject of digesting the decisions and the laws, and he put up to me the problems which were going to confront the law publishers of the country, as the country grew. He told me that they were already perplexed to know how they were going to take care of the correct digesting of decisional law when the state of Texas, for instance, had all the population the state of Texas was entitled to. The appellate courts of that state, as I recall it, now hand down about two thousand decisions a year. Mr. Pepper, of this Commission, has had very much experience along this line in connection with the digest that he and the Secretary of the Commission, Mr.

Lewis, prepare of the decisional law of this state. Shortly after that, the editor-in-chief of the West Publishing Company and the president of that company came to see me and made the offer that they would make a digest of all of the Pennsylvania laws, provided there could be certain amendments of the laws made and provided it could be done under state authority. They suggested to me that it be done by them under my authority as state reporter. I declined, after consideration, to yield myself to the suggestion, for the reason that I could not take the time myself to supervise and study and know about what was being done. That led me to examine the question as to how a codification or a compilation of the statutory law of Pennsylvania could be made; and then I ran up against the constitutional provision requiring that every bill should contain but one subject, which should be clearly expressed in its title, and I did not see how it could be done.

There is in the state government a very competent bureau called the Legislative Reference Bureau, and that bureau in connection with commissions that have been created by the state from time to time, has made compilations, or assisted in the making of compilations, affecting particular branches of the statutory law, like the borough code, the township code, and the sales act, and the commission that Mr. Alter was on, which made a compilation of all laws relative to decedents' wills and estates and their distribution in the orphans' court, and so on. I think possibly I am responsible for the suggestion of this amendment. My thought was this: We now have seven volumes of Purdon's Digest. They are not official publications. By the time ten more years will have elapsed, no one knows just how many volumes of Purdon's Digest there will be; but if they increase in number, it is going to be, as indeed it is today, a very difficult thing to be absolutely certain that every act of assembly touching a given subject has been seen and read or considered by the lawyer or the layman who is concerned in an examination of any particular branch of the law. So it seemed to me that it might be a very good thing, in a great state like this, to have, at some time when it could be done under proper auspices and in the proper way, a complete revision of the statutory law of the state. I think the suggestion made by the gentleman from Erie, Mr. English, as to how you would take care of subjects that were dropped out of that kind of a codification is met by the statement that that is done every time there is a re-draft or a codification of any particular branch of the law. There were certain statutes, or parts of statutes, that were dropped out by the commission that Mr. Alter was on. I helped to draft the first township code and I know that we dropped out certain provisions of the law that we thought were obsolete or not as workable as some other provisions would be. Therefore, my thought was, that that could be carried forward as it is done in some of the other states, by the Legislative Reference Bureau of the state, working with a commission composed of lawyers of eminence in the state, who would be called in an advisory capacity to supervise the work. If the whole statutory law of the state could thus be examined and revised, and at a session of the legislature a member thereof could offer a compilation which would be entitled "The Revised Statutes of Pennsylvania," and at the end of it the usual repealing clause be

inserted, so that it would provide that all acts not embraced within the revision should be repealed, then we would have a starting-point in the statutory law of the state, and so far as subsequent amendments to that codification or revision are concerned, that would be made in accordance with the terms of this amendment, they would be made by acts which would follow the constitutional provision as it now exists and would contain but one subject, which would be clearly set forth in the title.

Under the Massachusetts system, as I recall it—I never had occasion but once to examine it—the whole of the statutory law is divided into chapters, so that if you wanted to know what the statutory law of Massachusetts was on any question, say, touching corporations (because that was the particular thing with reference to which I was called upon to examine the Massachusetts act), you turned first to the compiled statutes of Massachusetts, or the revised statutes as they were called, you saw what the law was as adopted in the revision, then you took the pamphlet laws for each year and turned to the given chapter in which the law relative to corporations was set forth, and if you did not find it there, you knew there was no further modification of the law as it was made by the revision. It is to enable that to be done in Pennsylvania, and to take out of the law the statutes that are obsolete—the Legislative Reference Bureau tells me that there are scores if not hundreds of such statutes—it is to enable that to be done and to be done well and scientifically that this amendment was drafted.

Mr. REED. Mr. Chairman: I heartily approve of the purpose of the suggestion made by Judge Snitzberger. I do not have very much time left, and I do not want to spend it looking up statutes; but it seems to me that this amendment or suggestion more properly ought to go into section 6. We had quite a discussion about that section the other day, and I do not have the amended section as finally passed. I think it was in that little code that was made up of amendments that were passed. At any rate, that original section was that "No law shall be revived, amended or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length," and there are several pages of discussion on that section; but how it finally was passed I can hardly make out here. I would ask the Secretary to read the section as finally adopted.

The CHAIRMAN. As requested by Judge Reed, the Secretary will read the section as it was amended at a former meeting of the Committee.

The Secretary read the amended section as follows:

Section 6. No law shall be revived, amended or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length. But every law amending or reviving a law creating a general system may recite only such short title descriptive of such general system as may have been expressed in such law, together with the date of approval of said law.

Mr. REED. Mr. Chairman: Now, if you will add your provision to that section, you will have no confusion with section 3.

Mr. SCHAFFER. Mr. Chairman: It seems to me that is a question that would come before a committee on style. I understand further amendment is to be made by Mr. Pepper to that. I believe

he proposes to make a further amendment to the section Judge Reed has just read. As I recall it, that has to do solely with the revision or amendment of laws. This that I have in mind, in the broad sense, would be more than that; and whether it belongs in the one section or the other could be taken care of by a committee on style which could incorporate it where it properly belongs.

Mr. GORDON. Mr. Chairman: May I inquire of the Attorney General whether the use of the word "general" before the word "revision" might not be a good and accurate way to amend it.

Mr. SCHAFFER. Mr. Chairman: I think it would be.

Mr. GORDON. Mr. Chairman: With the concurrence of the chairman of that committee, I move that the word "general" be inserted in the proposed section before the word "revision" in the second line.

Mr. SCHAFFER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE III, SECTION 13.

The CHAIRMAN. The next section in order for consideration is section 13 of article III of the Constitution, the supplemental report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 13. No term of any public officer shall be extended nor his salary or emoluments increased or diminished, except the salary or emoluments of judges, after his election or appointment.

On the question,

Will the Committee adopt the report?

SALARIES.

Mr. PINCHOT. Mr. Chairman: May I ask a question? Would this prevent the increase of salaries of clerks, for example, during the terms for which they were appointed, or under the civil service permanent appointment?

The CHAIRMAN. A clerk would not be a public officer.

Mr. PINCHOT. Mr. Chairman: That is so. What I meant to ask was, would it prevent the changing of the salary of the head of a bureau, for example, or of a state department?

The CHAIRMAN. It certainly would prevent the increase of the salary of the head of a state department. As to the head of a bureau, it would depend upon whether the head of the bureau was one to be regarded as a public officer or as a mere ministerial agent.

Mr. PINCHOT. Mr. Chairman: There are cases as, of course, the gentleman knows, where the heads of departments or bureaus have been in service from fifteen to twenty years or more, during which time it was necessary and right that the rate of salary of the office should be increased, and I question whether this provision, for that reason, is wise.

Mr. GORDON. Mr. Chairman: I move to strike out the words "or diminished" in the proposed amendment.

Mr. REED. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. GORDON. Mr. Chairman: As this clause now stands, the salary of a public officer might be diminished, the salary of a judge might be diminished, but could not be increased. Of course, objectionable as the increase of salaries after election is, very much more objectionable is the power to decrease a salary after the election or appointment of an officer, whereby he could be punished for his failure to perform his duty in accordance with the will of the legislative power. I think this subject must have been overlooked by the drafters of this article.

On the question recurring,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

MR. SCHAFFER IN THE CHAIR.

ARTICLE III, SECTION 17.

The CHAIRMAN. The next section in order for consideration is section 17 of article III of the Constitution, the supplemental report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 17. Appropriations for charitable, educational or benevolent purposes may be made to a corporation or association not under the control of the commonwealth, but engaged in work or service deemed by the general assembly to be for the public good; provided, that such work or service conforms to such standards of excellence as may be prescribed by general law or by an executive agency established by general law; and provided further, that the benefits of such work or service are in no way dependent upon religious belief or denominational connection; and provided further, that every such appropriation shall be made by a vote of two-thirds of the members elected to each House. No such appropriation shall be made to any person or community; but this prohibition shall not affect appropriations for pensions or rewards for military service or for the retirement of judges or of employees of the state, or a state institution or of the public school system.

On the question,

Will the Committee adopt the report?

CHARITABLE AND EDUCATIONAL APPROPRIATIONS.

Mr. McCORMICK. Mr. Chairman: I consider this as probably one of the most vital questions that will come up before this body. You will notice, from the report of the committee, that it was not the unanimous opinion of the committee. It was only before us, since I joined the committee, for a very brief discussion, and the thought was that it should be brought out here in the Committee of the Whole for a full and complete discussion. I have not been present at any other meetings where this question has been discussed. The subject is such a vast one that certainly I have not completed my study of it. This amendment, in a way, improves a most vicious system that exists today in our state form of government. In fact, I think it is one of the greatest evils existing today. There are two

great problems. First, the question as to whether or not a state should take the taxpayers' money and give it to a private corporation or a private association. That is a great problem. Does the state have the right to turn over to a group of individuals the expenditure of the taxpayers' money with practically no accounting? The inequality of the disposition of that money, the lack of uniformity of distribution, is another great problem. Now, this is an attempt to do away with the evil as it has existed during past years, whereby the threat can be made to a legislator that if he does not come along on certain legislation, he does not get his appropriation. It is an apparent attempt to do away with the log-rolling which goes on where groups of legislators from one section of the state will combine with groups from another section and say "If you take care of my end of the state as to charities, I will take care of your end of the state." And the same thing is done as to educational institutions. It is an attempt to do away with that. The system has become a scandal, and it seems to me a problem of this importance should have most thorough discussion, and that it should be taken up and discussed at this time. I was not present when it was formerly discussed, and I did not hear the arguments presented on the other side; but I have a very grave doubt in my mind as to the wisdom of adopting this indorsement of the present system. The appropriations are to be based upon excellence of service. The claim today is that these institutions are doing a great work, an excellent work, in taking care of charity patients, and the appropriations are to be based upon certain standards. Now, the legislature is to make those standards and to determine the excellence of service, and you are putting this power into the hands of the legislators, the people who are particularly interested in getting the particular appropriations for their particular communities, because they feel, if they do not get them, they are going to be repudiated at home. You are not making any improvement to the existing clause and article in the Constitution.

It seems to me it is contradictory, too, but I do not know whether, as a layman and a business man, I properly read it. It goes on, in the first part, to say that appropriations may be made to private institutions under certain conditions, if the standards are right and the service is excellent, and then it goes on, further down, it is copied from the article in the present Constitution, and states that no appropriation shall be made to a person or a community. But every appropriation that is made to a hospital or to a charitable institution in a city or in a county is an appropriation made to a community, and any community today can get an appropriation by organizing a hospital or a private association, and applying for it to their legislator. He could not refuse under the existing system. If a representative crowd of citizens want to establish another hospital, or another industrial home, or another children's aid society, or another school of some kind, they go to their legislator and demand their right, as another institution is getting it, because they propose to perform just as important a service, and therefore want exactly the same appropriation. Where is this going to end? It is top-heavy today. It is not only vicious in its defeat of legislation for the people of this commonwealth, but it is becoming a serious financial problem; and where, under this, are you going to stop

it? Suppose you do determine to treat it as you do the school appropriation, that is, appropriate a lump sum. What is to prevent me in my county from organizing another charitable society and getting a board of directors of reputable citizens and coming to you and demanding from you their pro rata share of that lump sum, and how could you refuse? This is a great big problem, and it is too big to pass over without a thorough discussion of the subject. I do not know if today is the time to do it. There are not many members here. I was expected to take Mr. Palmer's place in Washington today, but I felt this was a question of such great importance that I called him on the telephone and told him I wanted to stay here for the purpose of hearing the discussion on this problem, which I feel is of such vital interest to our commonwealth. I do not have any definite amendment to make, because I do not feel that I am competent, with the little knowledge that I have on this subject, to propose a proper amendment that will cover a subject as vast and great as this one is. I do very strongly feel that it is not the function of the state to take the taxpayers' money and put it into the hands of private corporations or private associations. I want to hear these learned lawyers discuss that question. I do not know whether the appropriations, in the manner they have been made in past years, have been legal. A system has grown up. But I am sure of one thing, that any change in this matter should be made gradually. A number of institutions have adopted this system innocently, and they have taken their appropriations. The cutting off of that money would create a very severe hardship and possibly cause great suffering in the state. Any change that is made should be made gradually, in such a way that readjustment and reorganization could be brought about, so that these institutions may have an opportunity to adjust their own systems either by local taxation or by voluntary contributions. We should in some manner do away with the system which in my opinion is the most vicious system that exists today in our state government.

Mr. PEPPER. Mr. Chairman: I think we all agree with the gentleman who has just taken his seat that this is one of the most serious and important questions that will come before the Commission. I think a good deal depends upon the method of our approach to the discussion of the question. I think one can foresee that, unless some method of approach is determined, we shall find ourselves constantly embarrassed by discussing one phase of the subject, without having all its phases before us at the same time. What has just been said is an illustration of this difficulty. I suggest that the subject divides itself naturally into two parts. In the first place, there is the question of general principle touched upon by Mr. McCormick as to whether or not the state should continue, either indefinitely or for a limited time, to make what are usually called charitable appropriations. That question is precipitated at once by the report of the committee, and if the Commission were of the opinion that the state should no longer make appropriations of this sort, or if the Commission were of the opinion that the state should gradually reduce its appropriations for these purposes and stop them altogether within a definite time, then the report of the committee would be set aside in favor of a substitute containing a provision to the effect last stated. On the other hand, it seems to me that the re-

port of the committee upon this subject does not touch the question to which Mr. McCormick principally addressed himself, and that is the question of method, the question of how you are to deal with the subject of charitable appropriations, assuming that the state is going to make them. Personally, I am very much interested in arriving at the right solution of that question of method or system. We will never get to that question of method or system, if we decide in the first instance that there are to be no such appropriations. I suggest, therefore, that what is really in issue at the present moment is, not the question of method or legislative or executive system to be applied for administering the business of charitable appropriations, if we are to have them, but only the question whether the committee has reported a sound statement of a principle according to which the state may make these appropriations, if it is to make them. If we discuss the evils of a system of administration coincidentally with our consideration of the fundamental question of principle, we are going to end in confusion.

I suggest, therefore, that we focus our attention upon the question first raised by Mr. McCormick, namely: Is the state to continue charitable appropriations at all? If so, is this the right statement of the principle upon which those appropriations are to be made by the state? If it is decided that this is the right principle, or some modification of the principle reported by the committee, we shall at a later stage of our deliberations reach the highly important practical question of how the principle is to be put into effective application. I understand that the committee having charge of the matter will report to us shortly in favor of a budget system for the commonwealth. One of the things that will have to be considered in connection with the budget system is the duty of the Governor, in submitting his budget, to take account of those items in it which are items of charitable appropriations, if there are to be such; and when that time comes, I shall have a suggestion to make respecting the duty of the Governor in such case to include in his budget, in lieu of the present system of definite recommendations for specific charities, a recommendation of a lumping item for classes of beneficiaries, as for instance hospitals, insane asylums, or as the case may be, or at his option an aggregate item to cover the whole amount to be distributed in this fashion, accompanied by a scheme for the distribution of the items among the named beneficiaries in accordance with a plan which shall take account of the relative importance of the classes and within the classes, conformably to the standards of excellence applicable to them, with power on the part of the legislature to decrease the items, but not to increase them, and not to alter the application of the plan in respect to particular beneficiaries, but merely to modify the plan as a whole.

Now, as I have said, by way of anticipation and to give point to my remarks, we must distinguish in the interest of clearness between the question of the principle whether the state is to continue at all the making of charitable appropriations, and, if so, on what theory, and the subsequent question, equally important but entirely distinct, respecting the method as between executive and legislature for carrying the principle into effect; and if Mr. McCormick will permit me, I will suggest to him that many of the dangers touched upon in his very important contribution to this

discussion are dangers that can be safeguarded when we come to consider the method and system, rather than in connection with the discussion of the fundamental policy.

Mr. McCORMICK. Mr. Chairman: I do not want to be understood as being opposed to state appropriations for charitable purposes. For instance, our State Lunatic Hospital is completely under the control of the state. I thought possibly Mr. Pepper might have misunderstood me.

Mr. PEPPER. No. I understand.

Mr. McCORMICK. I am not opposed to any appropriation for charity. It is a question as to whether or not the appropriations, when made by the state, should be entirely under state control, or under the control of private corporations or associations. I agree with him that there are two separate questions of principle, to be discussed and determined separately.

SECTION POSTPONED.

Mr. GORDON. Mr. Chairman: I move the further consideration of this report be postponed until Wednesday morning next. I think Mr. McCormick is right, that the subject is one of fundamental importance and of great delicacy, and ought to be considered by the whole body. One-third of this body is now absent, and it is impossible to focus one's attention upon one branch of this question in considering this resolution, because it embodies both. It embodies, first, the striking down of the present very important provision in the Constitution, that is, that no appropriations shall be made to sectarian or denominational institutions. That is eliminated from the Constitution by this amendment. And next it proceeds, after having destroyed that provision of the Constitution, to provide how the charitable appropriations of the commonwealth may be divided up among private institutions and associations. Therefore, both questions are involved in this proposed amendment. I have deep conviction upon this subject, I have very earnest feeling on it, and I do not think that the last day of the week's meeting, with one-third of the body absent, should be devoted to a consideration of this question. I move, therefore, that it be continued until Wednesday next.

Mr. McCORMICK. Mr. Chairman: I second the motion.

On the question.

Will the Committee agree to the motion?

Mrs. MILLER. Mr. Chairman: I am exceedingly interested in this question, and I cannot be present on Wednesday but can be present on Tuesday. As a personal favor, would it be possible for Judge Gordon to change his motion from Wednesday to Tuesday?

Mr. GORDON. Tuesday afternoon. You have passed a resolution obliging us to be here at ten o'clock on Tuesday morning. That will be difficult for me, but I cheerfully bow to it, and I therefore change the motion by making it the Tuesday afternoon-session. I thought on Wednesday we would be more likely to secure a full house.

Mr. McCORMICK. Mr. Chairman: As the seconder of Judge Gordon's motion, the change is satisfactory to me.

On the question.

Will the Committee agree to the motion as amended?

Mr. FISHER. Mr. Chairman: This question involves a very great subject, one that ought to be discussed thoroughly, and one on which we ought to get all the light possible. In considering the postponement of the consideration, may I suggest that it might be wise for the Commission to take the advice of our Board of Charities—we have such an organization in the state, of which Mr. Bromley Wharton, I believe, is secretary—and secure the data relative to the institutions that would be affected, the extent of the appropriations that have been made and the amount of service that they have been rendering? I know it would be very enlightening to me to have such information, and I conceive that it might be to some other members of the Commission. This is thrown out merely in the way of suggestion.

On the question recurring,

Will the Committee agree to the motion as amended?

It was agreed to.

The CHAIRMAN. With the consent of the Commission, the Chair will instruct the Secretary to communicate with Mr. Wharton and obtain from him such data as may illuminate the question we will be called upon to consider.

RECONSIDERATION OF VOTE ON SECTION 13, ARTICLE III.

Mr. FISHER. Mr. Chairman: I move to reconsider the vote by which the report of Committee No. 1 on section 13 of article III of the Constitution was adopted as amended by Judge Gordon. The object of the amendment was to remove the danger of the diminishment of judges' salaries?

Mr. GORDON. Yes, sir.

Mr. ALTER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. FISHER. Mr. Chairman: In the way in which the amendment has been made, it seems to me it subjects all other officers to the danger of having their salaries reduced. Now, that is not the thought, I believe, of the committee. I may be wrong in my understanding of it, but it reads, in the way amended, "No term of any public officer shall be extended nor his salary or emoluments increased, except the salary or emoluments of judges, after his election or appointment." This would leave the way open to a diminishment of all salaries, and for this reason I make this motion.

Mr. ALTER. Mr. Chairman: I think Judge Gordon will probably be content with the section if, after this reconsideration, the amendment should be to insert the parenthetical clause "except the salary or emoluments of judges" before the expression "or diminished" instead of after it.

Mr. FISHER. Mr. Chairman: It is the intention to make a motion, after agreeing to the pending motion, to refer the section back to Committee No. 1 for amendment.

Mr. ALTER. Mr. Chairman: As I said before, the purpose of Judge Gordon would be accomplished right here, without otherwise considering the question, if the parenthetical clause "except the salary or emoluments of judges" would be inserted immediately before the words "or diminished" instead of after them, so that it would read "No term of any public officer shall be extended nor his salary

or emoluments increased except the salary or emoluments of judges or diminished after his election or appointment."

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

On the question recurring,

Will the Committee adopt the report as amended?

MOTION TO RE-REFER SECTION 13 OF ARTICLE III.

Mr. FISHER. Mr. Chairman: I move that the Committee of the Whole recommends that the section be referred back to Committee No. 1 for further consideration. I do this, by way of explanation, because I am doubtful whether or not the matter we have in mind to reach would be covered by the suggestion made by the chairman of our committee informally, and I think nothing can be lost by referring it back.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 20.

The CHAIRMAN. The next section in order for consideration is section 20 of article III of the Constitution, the supplemental report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 20. The general assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever.

On the question,

Will the Committee adopt the report?

MOTION TO RE-REFER SECTION 20 OF ARTICLE III.

Mr. ENGLISH. Mr. Chairman: I would like to suggest that this section again be referred back to Committee No. 1. I do this for the reason that Committee No. 5, which has in charge the general subject of municipalities, is now considering the drafting of an amendment to this particular section which would permit the legislature to create regional planning commissions—commissions having jurisdiction over more territory than is ordinarily included in a single municipality. We are now securing data from Massachusetts, Illinois and other states where there are in existence metropolitan and regional commissions having jurisdiction over such subjects as water supply, sewage disposal and other general municipal subjects affecting more than a single community. The object is rather far-reaching and important, and it seems to me that, at the proper time, the Commission will want to consider it carefully. I, therefore, suggest that until Committee No. 5 has had an opportunity to complete its investigation of the subject, this particular section be referred back to Committee No. 1.

The CHAIRMAN. The Chair wishes to state that he has recently argued a case before the superior court in which this section of the

Constitution was under consideration. It will be noted that this section only applies to special commissions, and that was the point on which the argument turned in the superior court. It seems to the Chair, however, if a reference back is to be made—and it would seem that ought to be—this section should be referred to Committee No. 5, which is considering the other question so closely related to it, rather than to Committee No. 1. Is there any objection in the Committee to the reference of this section to Committee No. 5 for consideration and report, rather than to Committee No. 1?

Mr. FISHER. Mr. Chairman: Just to keep the subject in the proper channel, I move that the Committee of the Whole recommends that the section be referred back to Committee No. 1, with instructions to confer with Committee No. 5.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 22.

The CHAIRMAN. The next section in order for consideration is section 22 of article III of the Constitution, the supplemental report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 22. No act of the general assembly shall authorize the investment of trust funds by executors, administrators, guardians or other trustees in the stock of any private corporation nor in private corporate bonds not approved by the legislature or some authority empowered thereby. Such acts now existing are avoided saving investments heretofore made.

On the question,

Will the Committee adopt the report?

INVESTMENT OF TRUST FUNDS.

Mr. PEPPER. Mr. Chairman: May we have some explanation from the chairman of Committee No. 1? This section is not entirely clear to me. It provides that no act of the general assembly shall authorize the investment of trust funds by certain fiduciaries "in the stock of any private corporation"—that is clear enough—"nor in private corporate bonds not approved by the legislature." The thought that occurs to me is, that to prohibit the legislature from authorizing investments in bonds not approved by the legislature gets you nowhere, because the very act which authorizes the investment approves the bonds, or may do so.

Mr. GORDON. There are two negatives.

Mr. PEPPER. It is the result of the double negative in the section. But the real question seems to me to turn not so much on the form of the expression as upon the substance of the thought: Is the legislature to have under this section the power to declare in general terms that certain bonds of private corporations are fit subjects for investment?

The CHAIRMAN. That was the intention of the committee—either the legislature or an agency created by it.

Mr. PEPPER. Mr. Chairman: Then there is no restriction upon the action of the legislature in singling out specific bonds; there is no requirement that there shall be approval of bonds as a class. It seems to me that this section as drawn leaves it open to the legis-

lature to specify a particular issue of bonds of a particular corporation and authorize investment therein. If I am right, that is a serious defect. If it is not intended, I am sure I shall be set straight by the chairman of the committee.

The CHAIRMAN. The understanding of the Chair is that that is true in a number of states, from bond lists that we receive, marked "Valid for legal investment in New York," "Valid for legal investment in Massachusetts." There are some state agencies which require that. The thought was that in all probability this would be sent to the Banking department, where the approval of bonds of private corporations for legal investments would be passed upon; but the legislature, of course, could do it itself, either by general provisions or by the designation of particular bonds, so the Chair understands.

Mr. ALTER. Mr. Chairman: The gentleman from Indiana, Mr. Fisher, acted as chairman of Committee No. 1 at the time the report on this section was adopted, and he can better explain the purpose of the committee in adopting this language. For my own part, I would not have placed legislation like this in the Constitution at all. There are only three other states in the Union that have anything like this in their Constitutions. It seems to me it is purely a matter for legislation and not for constitutional provision. However, the gentleman from Indiana is familiar with the reasons which moved the committee to adopt this language.

Mr. FISHER. Mr. Chairman: The present provision in the Constitution on this subject prevents the investment of trust funds by fiduciaries in any form of private stock or bond security. It seemed to be the sense of the Committee of the Whole, in discussing the subject tentatively, that that restriction should be lifted, so as to permit fiduciaries to exercise greater latitude in making investments. With that thought, the subject was referred back to the committee. The first thought was to eliminate stocks as a possible investment for trust funds, limiting the investments to bonds. After further consideration, the committee felt there ought to be some restriction or limitation placed upon investments in bonds. This can be, as suggested by Mr. Alter, left purely as a legislative matter for action by the law-making body; but it seemed to a majority of the committee that it was better to place some restriction here upon the law-making body, putting the responsibility on it of either approving specifically the bonds in question or as a class, or of creating some agency of government which would be clothed with authority to pass upon the class of bonds which may be approved for such investments. It is a subject which I think ought to be looked at very carefully. There is great temptation on the part of those intrusted with large funds to try to realize as large an income as possible, and sometimes the question of safety is overlooked. It is purely in the interest of safeguarding the corpus of the trust that prompted the report of the committee on this matter. Mr. Pepper is right in assuming that this amendment would permit the legislature specifically to approve certain issues, or they can exercise their legislative option of applying their approval to certain issues, or they can exercise their legislative option of applying their approval to certain classes of bonds, or they can delegate the authority to some executive branch of the government.

Mr. REED. Mr. Chairman: I believe I raised the question first about the propriety of striking out this provision, and it seems to me that we steer ourselves right into the same difficulty if we permit the legislature—that is not the word I meant to use, because we do not permit anything—if the Constitution permits the legislature to pass special laws for the investment by trustees in particular classes of bonds. I would suggest and move to amend this provision by striking out the words “by the legislature or some authority empowered thereby,” and insert in lieu thereof the words “by some authority empowered by the legislature to pass upon issues of bonds.” Then we will have it under general rules.

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE III, SECTION 24.

The CHAIRMAN. The next section in order for consideration is section 24 of article III of the Constitution, which was referred back to the committee for investigation and possible amendment, the supplemental report of the committee being that there is no occasion to change this section and that it shall stand without amendment.

The Secretary read the section as follows:

Section 24. No obligation or liability of any railroad or other corporation, held or owned by the commonwealth, shall ever be exchanged, transferred, remitted, postponed or in any way diminished by the general assembly, nor shall such liability or obligation be released, except by payment thereof into the State Treasury.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE III, SECTION 33.

The CHAIRMAN. The next section in order for consideration is section 33 of article III of the Constitution, the supplemental report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 33. For the purpose of legislation, the general assembly shall have power to classify counties, cities, boroughs, school districts and townships according to population; but counties, cities or school districts shall not be divided into more than seven classes, and boroughs or townships into more than five classes.

On the question,

Will the Committee adopt the report?

Mr. FISHER. Mr. Chairman: Some of the members seem to be confused by the number of the section. May I call their attention to the fact that this is a new section, and the number is due to the omission of some other sections which have been dropped.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE IV, SECTION 8.

The CHAIRMAN. The next section in order for consideration is section 8 of article IV of the Constitution, the supplemental report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 8. The Governor shall nominate and, by and with the advice and consent of a majority of all the members of the Senate, appoint a Secretary of the Commonwealth, an Attorney General and a Secretary of Internal Affairs during his pleasure, a Superintendent of Public Instructions for four years, and such other officers of the commonwealth as he is or may be authorized by the Constitution or by law to appoint.

In offices to which he may appoint, the Governor shall have power to fill all vacancies that may occur during the recess of the Senate or within ten days before final adjournment, by granting commissions which shall expire at the end of their next session, but before final adjournment of such session he shall nominate some one for the full or unexpired term as the case may require; failure of the Governor to so nominate shall be an equivalent to a rejection of any person commissioned during such session or the recess following the final adjournment of the same. He shall have power to fill any vacancy that may occur during the recess of the Senate or within ten days before the final adjournment in the office of the Auditor General, State Treasurer, in a judicial office, or in any other elective office which he is or may be authorized to fill.

If a vacancy occurs during the session of the Senate in an appointive or elective office, except within ten days before final adjournment, the Governor shall not appoint as in the case of a recess vacancy, but shall nominate to the Senate before final adjournment a proper person to fill said vacancy; failure of the Governor to so nominate shall be equivalent to a rejection of any person commissioned during such session or the recess following the final adjournment thereof. In the case of a recess or session vacancy in an elective office, a person shall be chosen to said office on the next election day appropriate to such office according to the provisions of this Constitution, unless the vacancy shall occur within two calendar months immediately preceding such election day, in which case the election for said office shall be held on the second succeeding election day appropriate to such office.

No person nominated for an office of trust or profit under the government of this state, who fails to receive confirmation before recess, shall be eligible to appointment to such office during recess. In acting on executive nominations, the Senate shall sit with open doors, and in confirming or rejecting nominations of the Governor the vote shall be taken by yeas and nays and shall be entered on the Journal.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE IV, SECTION 21.

The CHAIRMAN. The next section in order for consideration is section 21 of article IV of the Constitution, the supplement report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 21. The terms of the Auditor General and State Treasurer shall each be for four years, and they shall be chosen by the qualified electors of the state at general elections; but a State Treasurer elected in the year one thousand nine hundred and nine shall serve for three years, and his successor shall be elected at the general election in the year one thousand nine hundred and twelve, and in every fourth year thereafter. No person elected to the office of Auditor General or State Treasurer shall be capable of holding the same for two consecutive terms.

On the question,

Will the Committee adopt the report?

AUDITOR GENERAL AND STATE TREASURER.

Mr. SULZBERGER. Mr. Chairman: I should like a little further explanation concerning the backward view of Committee No. 1 in the proposed amendment—exactly why we should legislate on what should be done in the year nineteen hundred and nine, I do not see.

Mr. FISHER. Mr. Chairman: I would say, in answer to Judge Sulzberger, that the purpose of the amendment was to eliminate the office of Secretary of Internal Affairs as an elective office and leave it as an appointive office under the Governor, the same as other executive offices. The committee did not have in mind any change in the duties of the office itself.

The CHAIRMAN. It seems to the Chair that, as the section is to be amended, certain words could with entire propriety be stricken out of the amendment. We could cut out all the words beginning with the word "but" and ending with the word "thereafter."

Mr. PEPPER. Mr. Chairman: I move to amend the report of Committee No. 1 by striking out all the words beginning with the word "but" and ending with the word "thereafter."

Mr. SULZBERGER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. STACKPOLE. Mr. Chairman: I call attention to the fact that this amendment provides that no person elected to the office of Auditor General or State Treasurer shall be "capable" of holding the same for two consecutive terms. Would not the word "eligible" be better?

The CHAIRMAN. I think that follows the language of the present Constitution.

Mr. STACKPOLE. Mr. Chairman: This might also be a matter which should be referred to a committee on style.

Mr. FISHER. Mr. Chairman: The committee followed the wording of the section as it is in the present Constitution, where the word "capable" is employed. It is evident, however, that it is used in the sense of being eligible. It may be a question for a committee on style, if we are going to have one.

On the question recurring,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

Mr. GORDON. Mr. Chairman: I want to come to the support of my newspaper friend from Dauphin in his criticism of the word "capable." He thinks it should be "eligible." So do I. A man might have infinite capacity for holding an office, but he might not be eligible by reason of the provisions of the law. I think we ought to follow the press, in this matter at least. I therefore move to amend this section by striking out the words "capable of holding" and inserting in lieu thereof the words "eligible to hold," so that the sentence shall read: "No person elected to the office of Auditor General or State Treasurer shall be eligible to hold the same for two consecutive terms."

Mr. STACKPOLE. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

It was agreed to.

On the question recurring,

Will the Committee adopt the report as amended?

It was adopted.

AMENDMENT OF NOVEMBER 2, 1915.

The CHAIRMAN. The next subject in order for consideration is the amendment of November 2, 1915, the report of Committee No. 1 being that this amendment of the Constitution shall be eliminated.

On the question,

Will the Committee adopt the report?

The Secretary read the amendment of November 2, 1915, as follows:

Laws may be passed providing for a system of registering, transferring, insuring of and guaranteeing land titles by the state, or by the counties thereof, and for settling and determining adverse or other claims to and interest in lands the titles to which are so registered, transferred, insured and guaranteed; and for the creation and collection of indemnity funds; and for carrying the system and powers hereby provided for into effect by such existing courts as may be designated by the legislature, and by the establishment of such new courts as may be deemed necessary. In matters arising in and under the operation of such system, judicial powers, with right of appeal may be conferred by the legislature upon county recorders and upon other officers by it designated. Such laws may provide for continuing the registering, transferring, insuring and guaranteeing such titles after the first or original registration has been perfected by the court, and provision may be made for raising the necessary funds for expenses and salaries of officers, which shall be paid out of the treasury of the several counties.

On the question recurring,

Will the Committee adopt the report?

LAND TITLES.

Mr. PINCHOT. Mr. Chairman: Would it be possible for the chairman of Committee No. 1 to give us the reasons why it should be eliminated?

Mr. ALTER. Mr. Chairman: At the session of the committee at which this provision was considered, I was absent, and the gentleman from Indiana, Mr. Fisher, was acting as chairman. I am not at all familiar with the reasons which were discussed in the committee.

The CHAIRMAN. Mr. Pinchot interrogates Senator Fisher, the acting chairman of Committee No. 1 at the time it was resolved to report to eliminate this provision of the Constitution, as to the reasons which prompted the committee to eliminate it.

Mr. FISHER. Mr. Chairman: The reasons for the action of the committee lay in the fact that the provision seemed to be entirely impractical in this state. The purpose of this amendment to the Constitution was to provide a system of insuring titles to property, and it originated, I think, in the western states, where the titles are not so old and not so irregular as they are in the older states, such as Pennsylvania. It was known, I think, as the Torrens System, and it had quite a vogue a few years ago. It became an active issue in the legislature, and the legislature quite naturally approved the amendment; the people adopted it, and it has been in the Constitution for a number of years without anybody giving any thought to it. On reading it, it would seem to be impractical to anyone who is familiar with the course of titles in Pennsylvania. There is no objection to leaving it in, except that it seems to be entirely superfluous in a state like ours.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

PROPOSED AMENDMENT TO THE CONSTITUTION.

The CHAIRMAN. The next subject in order for consideration is a proposed amendment to the Constitution, which Committee No. 1 has reported with a negative recommendation.

The Secretary read the proposed section as follows:

Whenever an amendment to the Constitution of the United States shall be proposed by the Congress of the United States, the legislature, before taking action upon such amendment, shall submit the same to the voters of the state at the next general or municipal election for the purpose of obtaining the judgment of the said voters upon the advisability of said amendment.

On the question,

Will the Committee adopt the report?

Mr. REED. Mr. Chairman: I move that the report of the committee be disapproved and this proposed amendment be substituted for the report of Committee No. 1.

Mr. ALTER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

FEDERAL AMENDMENTS TO BE SUBMITTED TO PEOPLE.

Mr. REED. Mr. Chairman: I assume, as the committee gave no reason for the rejection, they decided in their own minds that it was unwise to trust the people with a vote on the question of any Federal amendment. Is that right, Mr. Fisher?

Mr. FISHER. No, sir.

The CHAIRMAN. I was a member of the committee. The reason that actuated me was, it seemed to me it provided for a straw vote, and not a real vote.

Mr. REED. Mr. Chairman: Then, do we eliminate the question of the wisdom of permitting the people to vote on the subject?

Mr. FISHER. Mr. Chairman: That may be eliminated.

Mr. REED. Mr. Chairman. I am glad I made some progress. Now, Mr. Chairman, that was exactly what was in my mind. The Federal Constitution delegates the power to approve or disapprove an amendment to the legislature. I do not believe, in the absence of an amendment to the Federal Constitution, that you can refer the question of an amendment to any other body in the state, nor that the legislature, under the Constitution of the state, has power to refer it to anybody else. The authority might have been delegated to the Governor to approve of an amendment; it might have been delegated to any other state agency. The Federal Constitution delegated it to the legislature, and there, it seems to me, the discretion must rest. With the assurance of youth, I venture to say that the supreme court will so decide in regard to the cases now before it on the question of the referendum of the prohibition amendment. That being my own notion, I drew this amendment, so that the only effect of what you designate as a straw vote is to obtain the sentiment of the people on the subject. Now, I cannot see that that is in any way a violation of the Federal Constitution. The constituents write to their members in the legislature about various things, including constitutional amendments. Some legislators have been known to consult influential constituents as to whether they should vote for or against an amendment. Patriotic societies and various other so-

cieties pass resolutions and send them here. I suppose, on this prohibition amendment that has just passed, there were all sorts of resolutions, and individual citizens and delegations of one kind and another, who pressed their views on the legislature. Now, it seems to me that it is a simple matter, and that there would be no more tearing down of the foundations of this government, in asking the people in some orderly way to say what they think about it, and it still leaves the legislators free to either follow the suggestion of their constituents or go contrary to it. Theirs is the discretion and the responsibility, and they cannot relieve themselves of it. It was with that in mind that I drew this proposed amendment. The thought that was in my mind was this: When the Federal Constitution was adopted, the line between the states and the United States, where the Federal government was concerned, was strictly defined. It was entirely proper at that time that when an amendment was proposed it should be put up to the state government and not voted on by the people generally. But, beginning with the fourteenth amendment, you have had a constant encroachment upon the rights and duties of the state—and when I say an encroachment, I do not mean it as a criticism; but that is the fact. It is an encroachment upon the individual life of the citizen, winding up with the prohibition amendment, which, if anything ever was a matter of state regulation or is a matter of state regulation, that is. So that it seemed to me that, in view of that tendency on the part of the Federal government, through the Federal courts, to gradually gather into its hands the control of the individual and the control of local affairs, it was exceedingly proper that the people of the state should have some opportunity to express themselves, even if that were only in a straw vote.

Mr. PINCHOT. Mr. Chairman: I should be very unwilling to let this opportunity pass by to range myself on the side of my friend, Judge Reed, and I hope it will be possible for me to do so. I agree with him in this particular case, but from a somewhat different reason. As I understand it, Judge Reed's proposition amounts substantially to this: That he proposed to substitute the advice of the whole people of the state to the legislature for the advice of those people of sections of the state who are particularly interested in an individual amendment and come to Harrisburg to lay their views before the legislature. In other words, his amendment is a movement directly towards the democratization of our government and in favor of giving more power to the people as a whole, and for that reason I take very great pleasure in supporting him.

Mr. REED. Mr. Chairman: I just love to have Mr. Pinchot on my side, but I do not want him to misconstrue my views. I am not in favor of initiative and referendum of any kind; but I do feel that, in an orderly way, the people ought to have the chance to express themselves, rather than through delegations and letters and through the newspapers. When it comes to the initiative and referendum, he and I are going to separate right there.

Mr. PINCHOT. Mr. Chairman: May I ask Judge Reed a question? Is the Judge in favor of the recall of judicial decisions?

Mr. REED. Mr. Chairman: If I am bound to answer that, no.

Mr. PEPPER. Mr. Chairman: I have no fixed conviction on the question under discussion; but, on turning to the fifth article of the Constitution of the United States, which deals with the subject of

amendments to the Constituion, I find that this question of the method of ratification of proposed amendments by the states has been foreseen and dealt with, and that it is not a case in which changed conditions have given rise to a question or method not anticipated at the time the Constitution was drawn. It will be remembered by the gentlemen, and it always has been in the minds of the ladies, that in article V of the Constitution of the United States it is provided that where the Congress has proposed an amendment to the Constitution it shall become effective—I now quote—"when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress." If the Congress, in submitting an amendment for the action of the states, is desirous that it shall be acted upon in the states by a vote of the people, then you have something more than a straw vote, because the Congress can direct that a convention be called in the state, with delegates to be elected to the convention, to pass upon the amendment proposed by the Congress. I merely wish to call attention to the fact that we are not dealing with a new question. We are dealing with a question that was considered when the Constitution was adopted and that the framers anticipated the particular question which Judge Reed has raised and meant to leave it to Congress to determine whether ratification in the state should be by the legislature or by a convention called and composed of delegates elected for the purpose. I do not mean that is decisive upon the question in hand, but it ought to be kept in mind, it seems to me, because the real danger of the amendment now under consideration is the one indicated by the Chair. It seems to me that you have the advice of the people of the state asked, not on some tangible question where their advice will be controlling, but an expression of their opinion to which the legislature may or may not give effect, and the chance that the expression that you elicit from the people will be a real expression of the mind of the state on the subject seems to me to be a very remote chance, unless the question is something like the prohibition amendment, which excited the interest of everybody. We are dealing now with the whole subject of amendments and not merely with amendments of a specific or sensational type, and I submit that we ought to remneber that the Constitution of the United States evidently intended to leave to the Congress the determination whether or not the ratification should be by the people of the state or by the legislature.

Mr. STACKPOLE. Mr. Chairman: I rise with some temerity, but I am wondering whether, under Judge Reed's proposed amendment, the legislature might, under direction of the Federal Constitution, provide, for instance, that ratification should first be by the legislature, and the second phase would then be ratification of that action of the legislature by the people, and only after that was done would the legislature's action be final. I do not know whether I make myself clear. My thought is, the people would ratify finally.

Mr. REED. Mr. Chairman: I do not think that is within the power of the legislature under the state Constitution, but I cannot say any more than I did. What I am distinctly trying to avoid here is a referendum, as generally understood, but that the legislature for its own information will ask the people of the state what they think about an amendment. Now, if an amendment to the Consti-

tution of the United States is not sufficiently important to call the attention of the people to it, then it ought not be passed.

Mr. SULZBERGER. Mr. Chairman: I would remind Judge Reed of the twentieth section of the Pennsylvania Bill of Rights: "The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance." Of course, that leaves open the question whether Judge Reed is not too late with his amendment, because, I suppose, as Mr. Pepper has said, it would have been a good thing if it would have been applied to the prohibition amendment.

Mr. THORPE. Mr. Chairman: May I be permitted to call back to your memories the fact that when the Constitution was made, there was no confidence in the people at all, or very little; and I do not think Mr. Pepper would find in the debates on the Constitution that there was any serious discussion of ever referring an amendment to the people by convention. May I be permitted to say, too, if this were put into the Constitution of Pennsylvania, what difference would it make?

The CHAIRMAN. If that is addressed to the Chair, the Chair's thought is that it would make a great difference, because we had this question up when the prohibition amendment was certified from Congress for ratification or rejection by the legislature. It seemed to me that it was necessary that that amendment, certified to us by the Federal government, should be proposed to the legislature which was then in session. If this amendment were adopted, then that would not be the course, and we would be out of harmony with the Constitution of the United States, because there would not be time to take a referendum vote, and unless a special election were called for a straw vote, there could be no vote taken. The Federal amendment was certified at the convening of the last legislature, and we considered it our duty to immediately submit it to the Governor. I was called upon to advise the Governor to immediately submit that and the suffrage amendment, when they were received from the Federal government. Now this totally changes the whole method, if it is to be changed, and we are doing something here that is a radical innovation, it seems to me, so far as the Constitution of the United States is concerned. I say that in answering the query which I understood to be addressed to me by Dr. Thorpe.

Mr. THORPE. Mr. Chairman: There is another matter. If the state of Pennsylvania should insert this in its Constitution, would it be construed—and there are members of the legislature here—would it be construed as making the people of Pennsylvania a part of the legislature? Now, there are two states in the Union, as we all know, whose supreme courts have made rulings on that point, and if this means the referendum, without calling it the referendum, is it a referendum?

The CHAIRMAN. May I just complete my thought? We would have defeated all the purposes of Mrs. Miller and the other ladies who advocated the submission of the suffrage amendment if this had been in the Constitution, because it could not have been submitted, for, as I understand Judge Reed's amendment, it makes it mandatory on the legislature to do this.

Mr. REED. Mr. Chairman: Surely. The first legislature after it is certified calls the election, and the next legislature passes on it. There are in evidence now amendments lying in Washington in cold storage some place, that you could call up in the legislatures and pass, that have been on hand twenty-five or thirty years.

The CHAIRMAN. That is not my construction of the duty of the Governor. In those instances, the Governor has not received the certificates from the Federal government of the action of Congress; but, when the Governor receives a certificate from the Federal government as to a constitutional amendment, my construction of the Federal Constitution is that it is his duty to submit it to the legislature immediately.

Mr. REED. Mr. Chairman: Yes; but there is nothing compelling that legislature to pass upon it.

The CHAIRMAN. No; but it is his duty to submit it. That is my thought.

Mr. PINCHOT. Mr. Chairman: I rise for the purpose of asking whether the language of Judge Reed's amendment is not in exact accord with the fifth article of the Constitution of the United States, as explained by Mr. Pepper. This amendment seems to me to propose that, when the legislature is to act upon an amendment and not a convention, then the legislature shall take certain supplementary action. In other words, if the Congress of the United States shall decide that the question should be determined by the legislature and not by a convention, then the legislature is to do certain things.

Mr. FISHER. Mr. Chairman: This matter was discussed before the committee. The committee, I think, in its action, was inspired not by any hostility to the thought that suggested the amendment, but by the effect that the amendment might have upon the processes provided by the Federal Constitution for the ratification of amendments which the Congress may propose. There are two methods of proposal, and under these two systems of amendments the Congress may decide which shall be applied, one by the legislatures of three-fourths of the states, and the other by conventions in three-fourths of the states. Now, suppose it is the thought of Congress that, in passing upon a ratification, popular sentiment shall be sounded as to the amendment. They will probably select conventions as the mode of passing upon the amendment, because such conventions would then have to be selected by the people of the several states. But suppose Congress should elect to use the other instrumentality, namely, the legislatures of the states. Those legislatures have been elected. It is supposed that they reflect, to a certain extent at least, the popular voice of the people they represent. Congress does not want to delay securing action by the slower process of electing conventions. Now, in this matter, we are passing upon an amendment to the Federal Constitution. The Federal Constitution provides the instrumentalities for amendment. What right have we, as a state, to qualify the action or the instrumentalities which have been created for the amendment of the Federal Constitution? I think that is the principal thing that inspired the negative report on the part of the committee. May I ask Judge Reed this: Suppose an amendment is suggested and Congress elects to submit that amendment to the legislatures of the states, and our legislature was in session, with this

provision in our Constitution in force, and would proceed to act on the amendment submitted, without first taking a popular vote, would that avoid the action of this state on the proposed amendment? That is a legal question on which I would be very glad to have his opinion. Personally, I am in sympathy with the thought of sounding out public sentiment on so vital a thing as an amendment to the Federal Constitution, if it could be done quickly and readily, without too much interference with the processes provided by the Federal Constitution. But it seems to me that we are confronted with two things; one is the delay that might be occasioned by simply sounding out public sentiment which would result in no way in binding or controlling legislative action, saving as it would do so sentimentally; and the other is the legal effect that it might have upon a proposition coming from Congress for the amendment to the Federal Constitution. Suppose we put it in. What would be the result?

The CHAIRMAN. The Chair has this further suggestion to offer to Judge Reed. It is possible that an emergency might arise in which there ought to be great speed in the adoption of an amendment to the Federal Constitution, and the Congress might ask all the states to convene their legislatures and immediately adopt the amendment. If this were a part of our Constitution, it seems to me, we could not meet the requirement of the Federal legislative body.

Mr. REED. Mr. Chairman: There would be thirty-six other states that could not.

Mr. SULZBERGER. Mr. Chairman: I would like Judge Reed's opinion on the question if the legislature, notwithstanding the passage of the proposed amendment, should act upon an amendment immediately when it receives it, is it probable that the supreme court of the United States would declare the action of that legislature unconstitutional?

Mr. REED. Mr. Chairman: That is a fine question for me to answer offhand. I do not know, but I think it would be one of the requirements that the legislature would have to act under, just as the rules which require that the members of the legislature should be elected in a certain way, that a quorum of the legislature should be present, and that certain formalities should be observed in the passage of legislation.

Mr. SULZBERGER. Mr. Chairman: But suppose they do act?

Mr. REED. Mr. Chairman: How can I answer that question when I do not think they will. I want to remove the idea from anybody's mind that I have any particular amendment in mind, that I am thinking about anything that has happened in the past; but I do believe that the prohibition amendment is an illustration. Their obtaining that is a good thing; I am not objecting to it. But, when you come to think about it, the honorable Chairman is deprived of his legal rights and suffering greatly by the action of Congress and thirty-six legislatures, and the people never had a chance to express themselves on it. That is what I am trying to remove.

The CHAIRMAN. But the states delegated that power, it seems to me, to the Federal government.

Mr. PEPPER. Mr. Chairman: We must remember, it seems to me, that we are dealing with a question which affects all the states and not merely Pennsylvania. To my mind, it would be most unfortunate if the several states of the Union were to initiate varying

processes of affecting legislative action within their limits in passing upon amendments proposed by the Congress of the United States to the national Constitution. If Pennsylvania enacts a provision of this sort, a neighboring state may enact a different method of informing the legislature of that state as to the will of the people. A state, in the interest of blocking Federal action, might very possibly provide that an interval of time should elapse, a very considerable interval of time, more than was necessary merely to take the vote, an interval of time so long as to defeat the possibility of action by the legislature of the state. That is not the way to deal with great national questions. It seems to me, if there is anything wrong with the way in which the Constitution of the United States can be amended, the thing to do is to amend the Constitution of the United States in respect to article V. Mr. Thorpe tells us that, when the Constitution was adopted, no regard was had to the opinions of the people. The question is not what was the view of the framers of the Constitution. Curiously enough, if Dr. Thorpe is right; they have provided in article V an alternative method, which contemplated the testing of the will of the people. The question is what is the temper of the Congress that sits today. If the Congress that sits today wishes to have this question passed upon by the people of the several states, the way is open through conventional action. If the Congress of the United States decides that it is to be by the legislatures, I beg the Commission to consider what chaos in national legislation we shall have, if every state is to be at liberty to set up its own tribunal for influencing the action of the legislature. You have all sorts of possibilities of discordant action, and I submit if there is need for a revision in these matters, it is a matter for amendment to the Constitution of the United States, and not for putting monkey-wrenches in the machinery whenever there is local dissatisfaction with the action of a particular amendment.

Mr. ALTER. Mr. Chairman: Just a word in favor of this motion which I seconded. In explanation of my being out of harmony with the committee of which I am the chairman, I will explain that I was absent when the committee had this matter under consideration; and it does seem to me that the section proposed by Judge Reed is free from any practical objection, and I think free from any technical objection. As he has suggested, when an amendment to the Federal Constitution is under consideration the newspapers and various organizations are diligent in communicating to the legislature their views. Nearly every constitutional amendment has some propaganda behind it, and the legislature hears from the propagandists, but it does not hear from the great body of the people who are not organized for the purpose of creating sentiment. His amendment provides for nothing more than a method by which the sentiment of the whole people can be ascertained for the information of the legislature. Now, certainly, it is desirable, from a practical standpoint, that the legislature should have some method of being informed what is the sentiment of the whole people of the state on the question which is pending. As far as technical objection is concerned, I can conceive of none. It surely does not interfere with the provision of the Constitution of the United States. It surely does not interfere with the action of Congress in submitting a proposed

amendment to the legislature of a state that the law of that state should provide a method by which the legislature, prior to taking action, could obtain information as to what the people of that state thought about it; and that is the whole thing. It has been suggested that there might come an occasion when it would be necessary to amend the Constitution of the United States in great haste, and that the delay incident to holding the proposed election would prejudice the welfare of the nation because of preventing hasty amendment to the Constitution. It is not contemplated that the Constitution of the United States ever should be amended in haste. It is a safe general rule that no constitution ever should be amended in haste. No amendment which has been provided for the Federal Constitution ever has required any haste. None of the amendments, at the time they were adopted, required special haste in their adoption, in order to preserve the welfare of the government. If this provision suggested by Judge Reed would do nothing more than to require more thought and more deliberation than might otherwise be given to a proposed amendment of the Federal Constitution, it would accomplish something which I think is desirable. He has referred to the speed with which the prohibition amendment was ratified by the legislatures of the states, and we have an amendment to the Federal Constitution now under consideration by the legislatures, and soon to be finally ratified without any question of doubt; and yet upon this proposed amendment, what do we have? We have emotional Governors, responding to propaganda, actually calling special sessions of their legislatures in order to do what? In order to wipe out over night a distinction which has existed from the beginning. Is that the kind of deliberation and thoughtful consideration which is contemplated in the machinery provided for the ratification of amendments to the Constitution of this nation? I scarcely think so. To come back to Judge Reed's proposition, it strikes my mind as a perfectly simple and an entirely unobjectionable method of enabling the legislature to be informed as to what is the real sentiment of the whole people, and not, as is now the case, to have the legislature learn nothing except the views of the organized propagandists who happen to be behind the particular amendment under consideration.

Mr. REED. Mr. Chairman: I would like to ask the Chair to say, because it is the fact, that this amendment of mine will have no possible relation to any pending amendment, such as the suffrage amendment that has passed the legislature and, as I understand the rules, is beyond the power of the legislature to recall it.

The CHAIRMAN. So the Chair understands.

Mr. McCORMICK. I am in sympathy with what Judge Reed is trying to accomplish; but the mere fact that, under this article in the Constitution, his asking only the advice of the people, it seems to me, defeats the very purpose which he is trying to accomplish. I can see the defeat by an advisory vote of the people of questions like woman suffrage, due to the neutral, to the voter who had not thought upon the subject. From the mere fact that his advice is simply asked, he does not take the trouble to go to the polls nor to study the question, because, under the Constitution of the United States, it has to be passed upon by the legislature, and twenty-five per cent of the voters would not express the thought of the people

of this commonwealth. There will be many questions which will be brought up which will not arouse the interest of every citizen, as has the prohibition question or as does the woman suffrage problem. Five years ago or ten years ago, what great interest was there in the mind of the average male voter of this state in suffrage? It has been a gradual development. If that vote had been taken in the year I covered the state, with the little interest that was displayed by many voters, and with an organization against it, it would have been defeated. Taking another situation as to this advisory vote, I can see how the legislators are going to be tremendously embarrassed. Some of the legislators may have in their districts a majority of votes in favor of it, and yet the total vote in the state may be against it. Now, those men, therefore, will have to vote against their own constituents.

I am in sympathy with getting the expression of the people, and, if you could get the expression of the whole people, and the real expression of the opinion of the people, I think the amendment would be a proper one; but, in my opinion, you cannot, and you may defeat the very thing which you are trying to do. It is, therefore, improper to make this change.

Mr. ALTER. Mr. Chairman: May I suggest to the gentleman from Dauphin, Mr. McCormick, who apprehends that, except on such questions as are affected by the last amendment to the Constitution and the one now pending, amendments to the Federal Constitution might not attract the attention of voters sufficiently to secure an expression of opinion, that if we look back over the amendments that have been made to the Federal Constitution, I scarcely think that we will feel that to be a fact. The amendment now pending, of course, the suffrage amendment, attracts the attention of every one. That surely was the case as to the prohibition amendment. The next preceding amendment was the one providing for the election of United States senators by the vote of the people. Surely, that attracted much public attention. The one preceding that was the power given to the Federal government to lay and collect income taxes. That surely would not have been overlooked as a matter of public discussion and public expression. Preceding that was the fifteenth amendment, giving the right to vote to all persons, notwithstanding color, and so forth. The one preceding that was the well-known fourteenth amendment, and the one preceding that, the thirteenth amendment, abolishing slavery. The one preceding that related to the method of electing the President and the Vice-President of the United States, and that takes us back to 1840, since which time I apprehend there has not been an amendment to the Federal Constitution submitted, the submission of which for the opinion of the voters of the state would not have attracted widespread discussion and expression at the polls at least as strong as that which we are ever able to get upon the ratification to our own state Constitution.

Mrs. MILLER. Mr. Chairman: I was much interested in Mr. Alter's shock and dismay at the undue haste that was exhibited by certain western Governors in regard to the Federal amendment. I would like to call the gentlemen's attention to the fact that we have been struggling for that amendment for fifty years. I would also like to call to their attention that it would have been possible to have had in this state the referendum that is now so desired by

several members of the Commission had they helped the suffragists in 1917 to put their bill through the legislature, and we possibly would not have had that ratification that we had in 1919 had that bill been put through in 1917 that we tried to secure at that time. Had we had their help on that, we would have had a referendum probably this past year on the subject. It seems to me that there should be an opportunity given to the people to express to the legislature their opinion on any Federal amendment. It does not come upon us so suddenly as to prevent that.

On the question recurring,

Will the Committee agree to the motion to disapprove the report and substitute the proposed amendment for the report?

It was not agreed to.

QUESTION OF QUORUM.

Mr. REED. Mr. Chairman: I raise the question that there is no quorum present.

POINT OF ORDER.

Mr. GORDON. Mr. Chairman: I rise to a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. GORDON. Mr. Chairman: I raise the point of order that the question of no quorum cannot be raised in the Committee of the Whole.

The CHAIRMAN. The Judge is correct and the point of order is sustained.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE III, SECTION 15.

The CHAIRMAN. The next section in order for consideration is section 15 of article III of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 15. On or before March 1 of each year in which the legislature shall be in regular session the Governor shall submit to the general assembly a budget. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the two fiscal years next ensuing, including expenditures for charitable and educational purposes. The Governor shall, at that time of presenting the budget to the general assembly, submit a bill containing the proposed appropriations for the fiscal years covered by said budget, as well as any bill or bills embodying any recommendations he may desire to make as to sources of revenue.

Immediately upon receipt of the Governor's budget the presiding officer of the House of Representatives shall introduce in such House the said appropriation bill and also all bills relating to sources of revenue submitted by the Governor.

The general assembly shall have power to increase, decrease, strike out, or otherwise alter any item in the appropriation bill, or add new items thereto. Until the appropriation bill shall have been finally acted upon by both Houses of the general assembly, neither House shall consider any appropriation measure, unless the same shall be solely for the immediate needs of the general assembly, or shall have been submitted to the general assembly by the Governor with the request that it be acted upon in advance of the appropriation bill.

After final action on the appropriation bill special appropriation bills may be enacted.

On the question,

Will the Committee adopt the report?

SECTIONS POSTPONED.

Mr. FISHER. Mr. Chairman: This is on the subject of a budget and is one of the most important things which will engage the attention of this Commission. In view of the importance of it, and in view of the fact that many of our members have left and others desire to leave, I move you that further consideration of this and the following section be postponed until next Tuesday afternoon.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

CORRECTION OF ERROR.

Mr. ALTER. Mr. Chairman: I would like to note an error in the report of the committee in the last paragraph of the budget section, the second paragraph at the top of page two. It was not the intention of the committee that that paragraph should appear in the report, because it is superfluous, in view of the language of the preceding paragraph. It is in there by clerical error. It is not intended to be a part of the report.

The CHAIRMAN. The Secretary will make the correction.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress; with the recommendation that sections 13 and 20 of article III be re-referred.

SECTIONS RE-REFERRED.

The CHAIRMAN. Sections 13 and 20 of article III are re-referred in accordance with the recommendation of the Committee of the Whole.

APPOINTMENT OF CHAIRMAN OF NEW COMMITTEE.

The CHAIRMAN. The Chair-desires to announce, in regard to the committee appointed by the Chair to consist of the five chairmen of the several committees, that the chairman of the new committee will be Mr. Alter, the chairman of Committee No. 1.

ADJOURNMENT.

Mr. GORDON. Mr. Chairman: I move the Commission do now adjourn until 10 o'clock next Tuesday morning.

Mrs. MILLER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 12.45 o'clock P. M., the Commission adjourned until Tuesday, January 13, 1920, at 10 o'clock A. M.

Senate Chamber,
Tuesday, January 13, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—21.

Alter, Carson, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Perrine, Pinchot, Reed, Smith, Stackpole, Thorpe, Tyson, Voll, Warburton, Schaffer (Chairman).

ABSENT—4.

Connelly, Cuyler, Sharpless, Sulzberger.

The CHAIRMAN. A quorum of the Commission being present, the Commission will proceed with its business.

The Chair lays before the Secretary certain communications which have been received, containing suggestions for amendments to the Constitution.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

INFORMATION.

The CHAIRMAN. The Assistant Secretary of the Commission has compiled some information which may be of interest to the Commission, and the Chair will now lay this information before the Commission.

There are two hundred and ten sections in the eighteen articles of the Constitution. The Commission up to this time has adopted without change one hundred and seven of those sections; with slight verbal changes it has adopted thirteen; it has adopted as substitute sections four; it has dropped from the Constitution three sections; there are on the calendar for consideration four sections; there are unreported and undisposed of sections numbering seventy-eight; and one new section has been added. So that there are but seventy-eight sections of the Constitution awaiting the action of the Commission.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports from Committees at this time?

Has Committee No. 1 anything to report?

Has Committee No. 2 anything to report?

Mr. CARSON. Mr. Chairman: Not at the present time, sir.

The CHAIRMAN. Has Committee No. 3 anything to report at this time?

Mr. THORPE. Mr. Chairman: This committee begs to submit a report for the consideration of the Commission.

The CHAIRMAN. The report will be received.

For Report No. 12 see Appendix.

The CHAIRMAN. Has Committee No. 4 anything to report at this time?

Has Committee No. 5 anything to report at this time?

Has any member of the Commission anything to bring before the Commission at this time?

Mr. PINCHOT. Mr. Chairman: I beg leave to submit and ask to have referred to the proper committee under the rules the recommendations of the Pennsylvania State Grange.

The CHAIRMAN. The recommendations will be received.

The Secretary read the recommendations as follows:

RECOMMENDATIONS OF THE PENNSYLVANIA STATE GRANGE.

ARTICLE II, SECTION 17.

Each ratio of population should singly elect its own representative to the legislature.

ARTICLE III, SECTION 13.

No law shall extend the term of any public officer or judge, etc. (The committee thinks judges should be subjected to the same rule as other officers are. By a decision of the supreme court of the state, judges are exempted from the workings of this provision of the Constitution.)

ARTICLE VIII, SECTION 1.

Strike out the word "male," thus providing for equal suffrage.

ARTICLE X, SECTION 3.

This section should be dropped because of adoption of the principle of equal suffrage in article VIII, section 1.

ARTICLE XVI, SECTION 6.

No change to be allowed in this section.

ARTICLE XVI, SECTION 12.

Telephone should be mentioned in connection with the telegraph. This section should also provide that one company must transmit the messages of another, just as one railroad must handle the cars of another, without discrimination. The Public Service Commission has made a ruling to this effect, but it does not apply within a radius of fifty miles from the point where the call is made.

ARTICLE IX, SECTION 3.

Natural resources should be stipulated as proper subjects of taxation.

(The legislative and executive committee of the State Grange are of the opinion that the Constitution of Pennsylvania needs fair interpretation and rigid enforcement more than it does revision and amendment.)

The CHAIRMAN. The recommendations will be referred to the proper committee.

Has any other member of the Commission anything to bring before the Commission at this time?

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

The CHAIRMAN. It is the recollection of the Chair that the charitable appropriation section of the Constitution was made a special order for this afternoon, and, therefore, it will not be proper to take it up at this time; but the other matters that are pending before the Committee of the Whole are proper to be taken up at this time.

The Commission, now being in the Committee of the Whole, will resume the consideration of reports of sub-committees at the point where they were dropped last week.

ARTICLE III, SECTION 15.

The CHAIRMAN. The first subject in order is the resuming of the consideration of section 15 of article III of the Constitution.

The Secretary read the section as follows:

Section 15. On or before March 1 of each year in which the legislature shall be in regular session the Governor shall submit to the general assembly a budget. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the two fiscal years next ensuing, including expenditures for charitable and educational purposes. The Governor shall, at the time of presenting the budget to the general assembly, submit a bill containing the proposed appropriations for the fiscal years covered by said budget, as well as any bill or bills embodying any recommendations he may desire to make as to sources of revenue.

Immediately upon receipt of the Governor's budget the presiding officer of the House of Representatives shall introduce in such House the said appropriation bill and also all bills relating to sources of revenue submitted by the Governor.

The general assembly shall have power to increase, decrease, strike out or otherwise alter any item in the appropriation bill, or add new items thereto. Until the appropriation bill shall have been finally acted upon by both Houses of the general assembly, neither House shall consider any appropriation measure, unless the same shall be solely for the immediate needs of the general assembly, or shall have been submitted to the general assembly by the Governor with the request that it be acted upon in advance of the appropriation bill.

On the question recurring,
Will the Committee adopt the report?

BUDGET.

Mr. McCORMICK. Mr. Chairman: Since the meeting of our committee, at which time we determined to submit this to the Committee of the Whole, I have been thinking somewhat of the provisions which permit the general assembly to increase, decrease, strike out or otherwise alter any item of the appropriation bill, or add new items thereto. That is not inserted in some of the budget systems of some of the states, the right to increase and to alter as generally as this proposes. I wondered whether in considering this question we could not consider it in connection with this measure, with this other question, the larger question of appropriation and the method of making those appropriations. This as I understand it would permit the legislature to treat appropriations exactly as they now treat them. In other words, the appropriation bill is held until the last day of the session and the same influence that can be exerted upon a legislature under the old system still remains. Under that system this bill could be held until the closing days of the session as it is now done, in which event the same responsibility would be thrown upon the Gov-

error which is wrong today. The appropriations should be determined while the legislature is still in session, and therefore I want to open up the question as to whether while we are upon this it is to be discussed in connection with the other bigger and broader questions; and whether there should not be thrown around it a check of some kind which would provide the fixing of some day on which this appropriation bill should be passed or adopted that there can be freedom of legislation and no undue influence brought upon any legislator to force him into voting for something in which he did not believe, for the purpose of getting the appropriation for the institution in his district. I think that is of very great importance and it certainly is involved in the other question, and I would like very much to have enlightenment upon the subject from the other members of the Committee of the Whole.

The CHAIRMAN. For the information of the Committee, the Chair would say that his understanding is that the provision of the section as drafted is intended to meet the situation that Mr. McCormick has in mind. Whether it will do that or not the Commission will determine. "Until the appropriation bill shall have been finally acted upon by both Houses of the general assembly, neither House shall consider any appropriation measure, unless the same shall be solely for the immediate needs of the general assembly, or shall have been submitted to the general assembly by the Governor with the request that it be acted upon in advance of the appropriation bill." In other words, the legislature would be tied up until it had acted on the budget bill. That is the Chair's understanding.

For the information of the Committee, the Chair desires to state that it is best to get the budget bill out of the way before we take up the charitable appropriations section because the latter measure may have to be omitted from the budget section as finally drafted.

Mr. McCORMICK. Mr. Chairman: As I read this, it reads as follows: "Until the appropriation bill shall have been finally acted upon by both Houses of the general assembly, neither House shall consider any appropriation measure unless the same shall be solely for the immediate needs of the general assembly, or shall have been submitted to the general assembly by the Governor with the request that it be acted upon in advance of the appropriation bill." What I refer to is other legislation. I have sat here in Harrisburg for many years, and I have had legislators come down to see me with tears in their eyes, and say, "I would like to be for or against that bill, but I cannot do it because they will take away the appropriation from the institution in my county." It is that vicious system that I would like to see done away with. That abuse is so large a part of the whole system of appropriations that we are proposing to discuss in the near future that you cannot divorce it, and I am raising that question. It has come to me since our meeting of the committee, that I would like very much to get information from the other members of the Committee if they have any definite ideas upon this subject.

Mr. ALTER. Mr. Chairman: I would like to inquire of the gentleman from Dauphin, Mr. McCormick, whether in his examination of other budget systems, he has observed any provision in any of those other constitutions which would obviate the difficulty to which he has referred?

Mr. McCORMICK. Mr. Chairman: I understand; I have not studied it for myself. I have been catapulted into this Commission within the last few days and have not had time to study it. For that reason I seek information. The Secretary of the Commission stated at the meeting of our sub-committee that there were certain states which gave the Governor the power of fixing appropriations and that the legislature could not increase them. Am I correct or not, Mr. Lewis? The legislature had the right to decrease or alter it, but did not have the right to increase over the amount as specified in the budget by the Governor.

Mr. LEWIS. There are some states in which the legislature has no power to increase the recommendations of the Governor, in other states it is reported by the committee.

Mr. ALTER. Mr. Chairman: If there are any budget provisions which provide that no legislation other than the general appropriation bill could be acted upon until after that bill had been disposed of, such provision as that I apprehend would probably relieve the difficulty which is in the mind of the gentleman from Dauphin, Mr. McCormick. To provide in the budget section that the legislature should have no power to increase an item would be to my mind taking away from the legislature too much of its proper prerogative and put in the hands of the Governor too much power.

The tendency is strong enough in the building up of executive power and the tearing down of legislative power without pursuing that policy further than is necessary for the protection of our system itself.

Mr. McCORMICK. Mr. Chairman: Those are just the points that I would like to hear the Committee discuss, and I agree with the chairman of our committee. Would a measure of this kind give too much power to the executive and take away from the legislature the power that belongs to that body? I would have no objection to this budget system as it stands provided the proper action is taken upon the question of the principle of making appropriations to properly controlled organizations; and also upon the method of distribution, so that you determine the principle upon which the appropriations are to be made and the method of distribution, then I would have no objection to this clause as it stands. Therefore, it is a difficult thing for me to vote upon this question until I know exactly how you propose to treat the making of appropriations to privately owned corporations in the state.

The CHAIRMAN. The Chair would state that there is no motion before the Committee except the motion to adopt the report of Committee No. 1 on section 15 of article III. The suggestion of the Chair would be, that if this budget system as laid down in the section as it now stands would be out of harmony with the section which relates to charitable appropriations, we could then go back and recast the budget system to meet any changes. As they are now, the understanding of the Chair is that the budget provisions of the section relating to charitable appropriations are in harmony; if they are out of harmony with the charitable appropriations section, there would have to be a corresponding change made in the budget system, which could be done at any time while we are in the Committee of the Whole.

Mr. FISHER. Mr. Chairman: I take it that Mr. McCormick had in mind that there is much abuse in appropriations to hospitals, private hospitals, and privately owned hospitals which will be involved in the budget which will be submitted by the Governor to the legislature under this provision. Now I take it that the very purpose of the budget system is to control the supposed evil which Mr. McCormick has in mind. The two propositions are otherwise distinct. If it were seen fit by this Commission to make a recommendation that would abolish private charities, then, of course, the budget system would not apply at all to that feature of the case. But suppose that were not done by this Commission or approved by the legislature or the people when they pass upon it, why then the Governor would have it within his power to keep these appropriations to private hospitals within reasonable limit and within the financial ability of the commonwealth. So that I cannot see that Mr. McCormick should have any hesitation in passing upon or voting on this on account of its relation or bearing upon the appropriations to hospitals, because it merely has a bearing and not a direct relation. Now the other feature that he has in mind, if I apprehend him, is the power which the legislature may have over these appropriations recommended in the budget and the reflex power which the executive might have in order to influence the opinion and action of members of the legislature. You must have a certain amount of latitude under our system of government. The functions of the executive, legislative and judiciary are supposed to be co-ordinate.

One cannot place the binding power of one upon the other with safety. They will not function properly. So that you cannot eliminate that difficulty, it seems to me, under our system of government at all. But this does seem to meet the objection to a certain extent. The Governor is required to submit his budget at a certain given time, which will be early in the session of the legislature. Now then, he has to make his recommendations, and it is only recommendatory, to the legislative branch. Then it goes before them and they are free and unhampered to act upon the recommendation of the Governor. If they desire to do so, they can eliminate certain articles which he has recommended. Suppose they think that he desires appropriations of money for some purpose that they deem nonessential. They exercise their function as legislators in eliminating the objectionable items. Suppose they think that a certain item is too large, they exercise their like powers in making a reduction. It is altogether possible that a single individual, although he may be Governor of the state, is not omniscient enough to know all of the needs of a great commonwealth. It would seem altogether probable that some of the legislators in one or both branches, coming from every corner of the commonwealth, may be able to make some suggestion which would even be enlightening to the chief executive; so that I cannot see that there is any objection on that score. The serious objection is to the power of the legislature to increase or insert items in the budget. The Governor has the right of vetoing in whole or in part any of the items when they come back to him. He has that authority after the legislature has taken action, and has submitted the result of their deliberations in the form of a bill which has been passed to him to exercise his prerogative of veto. And we have that check again. Now, it seems to me that you cannot place too much

restriction or too many limitations upon the operation of either branch of the government. You must give them both latitude in which to exercise their opinions and their judgment in the matters in hand. Then we have to take the sum total of their action, whatever it may be as the resultant.

I have no fears that the Governor will use this power to unduly coerce the members of the legislature. I was a member here for a good many years and sat in this chamber. Another member, the chairman of Committee No. 1, sat in the other end of the House, and upon my word I never saw a member in tears yet. They never exhibited their sorrow in the form of tears in either chamber because they were under such excessive pressure by the Governor. It may be that if they wept they went outside to weep. It might be that others have wept, but not the members of the legislature. I have no fears that there will be undue influence brought one way or the other. Now, let us suppose that it is desired on the part of the executive to exert his power to bring about certain action of the legislature. Suppose that a limit, a time limit, is fixed when a bill is to be introduced, and when it is to be reported out and acted upon. Now you have given a definite date as to when the chief executive and his heads of departments are to present the budget. Then it will only be necessary for him to get busy on the legislature before that time arrives. You cannot remove the exertion of power one way or the other. I agree entirely with Mr. McCormick, that, as far as possible, one branch of the government ought to be protected from any influence or exertion of power by another. I agree absolutely that the tendency is to concentrate power in the hands of the chief executive, but you cannot eliminate that altogether. It seems to me that this provision is about as restricted as it is safe for us to place before the people of the commonwealth, as we must keep in mind all the time that the result of our deliberations here will have to go before the people of the state in one form or another for their final action, approval or disapproval.

Mr. McCORMICK. Mr. Chairman: I would like to make the motion that you proposed. My whole idea in this thing is simply to attempt to correct or substitute such change in the system. I do not want to lose any opportunity to accomplish that. It might be possible under this budget provision, that if we should fail to adopt under the question of the principle of appropriations a method of distribution, then I would like to have an opportunity to attempt to kill the present system under this budget clause. That is my whole idea and I think the motion that you suggest, which I would, indeed, like to make as an amendment, be adopted; it would leave the question open.

The CHAIRMAN. It appears to the Chair that no motion is necessary, because it would be open at any time in Committee of the Whole for suggested amendments. If the subsequent action taken upon the appropriation measures is out of harmony with the action taken upon this budget clause, the matter would still be open for further discussion and amendment before the Committee.

Mr. ALTER. Mr. Chairman: Prior to Mr. McCormick's becoming a member of the Commission, when the Commission as a Committee of the Whole began the consideration of the calendar, it was very expressly provided and understood that the action taken by the Com-

mittee of the Whole upon any section was to be considered merely as tentative action; and that if thereafter as the Committee proceeded it became apparent to any one that the action taken upon any section was unwise a motion to take other action could be made without restriction or limitation. I apprehend that a knowledge of that fact will re-assure the gentleman from Dauphin.

Mr. McCORMICK. Mr. Chairman: I withdraw my amendment.

Mr. PINCHOT. Mr. Chairman: I would like to make an amendment in the form of an addition to the clause now before us, so that at the end of the second paragraph on page two of the calendar, after the clause which reads "Immediately upon receipt of the Governor's budget the presiding officer of the House of Representatives shall introduce in such House the said appropriation bill and also all bills relating to sources of revenue submitted by the Governor," should be added another clause reading as follows: "When the appropriation bill is under discussion in either House, the Governor and the heads of the executive departments shall have the right to be heard and shall be subject to interrogation in relation to such bill."

Mrs. MILLER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. CARSON. Mr. Chairman: I want to ask Mr. Pinchot as to the exact meaning of the words that he is using. Does he mean that it is purely optional with the Governor to appear, or does the second part of his sentence indicate, the Governor not appearing, that the members of the House could send for him and interrogate him?

Mr. PINCHOT. Precisely that.

Mr. CARSON. Mr. Chairman: They could actually summon him for interrogation, I do not mean in an offensive sense, I mean in the way of obtaining information; they could send for the Governor and request his presence even though he had not appeared voluntarily?

Mr. PINCHOT. Mr. Chairman: My intention is that the Governor and the heads of the executive departments should have the right to be heard in the defense of the appropriation bill and that at the same time they should be subject to interrogation by the House, but only in matters pertaining to the appropriation bills—

Mr. CARSON. Do you mean to refer to the right of one department to call on the other department for information and that the Governor would be interrogated in the nature of a personal conversation?

Mr. PINCHOT. Mr. Chairman: Precisely.

Mr. CARSON. Mr. Chairman: Instead of by address or communication?

Mr. PINCHOT. Mr. Chairman: May I say a word or two as to my reasons in this matter? First, I want to say that I was greatly gratified by the report of the sub-committee. I am in hearty accord with the wording of the section, of the clause, as reported by them; but I believe that an addition of this kind would be wise, not only because it has been defined and considered by high authority, for example the Constitutional Convention in New York, of which Elihu Root was a member, reported a clause similar to this one,

or similar to this in effect, there are many other cases, but my principal reason for presenting this is my own personal experience. It happens that for about a quarter of a century I have been a member of different committees of Congress, of state legislatures, and that for about twelve years I happened to be responsible for making and lobbying through Congress the appropriations for the United States Forestry Service, and that was a good deal of a job, because during that time the personnel of the service rose from eleven persons to over three thousand, the land controlled from none at all to six times the area of Pennsylvania, and the appropriations from less than thirty thousand dollars to more than five million. It was difficult to secure not only the money that was needed for carrying on this work, but to word the appropriation bills, that would make it possible to do the necessary work, in the right way. It was very serious. The process was something like this. It is, indeed, a very serious evil which I believe would be corrected by this amendment, and the process would be somewhat similar to this in any state legislature—First, making the estimate, I mean by the chief of the service; then it was approved by the Secretary of Agriculture or higher officer; then it went to the committee on agriculture which incidentally had no relation to any other appropriate committee. That would be corrected by the wording of this budget. Then it was necessary for me as chief of the service to appear before the committees, answer questions and endeavor to persuade the committee that both the money was right and the wording was right. Then it was necessary to go and interview members of the House who were known to be either friendly or hostile to any particular clause or the amount in the bill and repeat the lobbying process. The same thing had to be gone over in the Senate. Then the same thing had to be gone over with the conference committee. The result of it was, as we often said, and there was a great deal of truth in it, that it took about as much work to get an appropriation as it did to do the work after the appropriation was secured. That system had a great many evils in it. For instance, it was impossible, of course, by any such method as that to get any accurate knowledge of what an appropriation was for. We could not obtain the same results by putting the facts before a committee of the legislative body, for example, that was to make the appropriation as to put those facts before the whole body. Therefore, the fact was that we could give a very imperfect knowledge to the House or the Senate, and that imperfect knowledge gave rise to suspicion and very unfortunate habits of appropriation. During my time in Washington it was easier to get an appropriation of one hundred thousand dollars than it was, for example, to get an appropriation for two hundred and fifty dollars for the increase in salary of a clerk or technical expert, and the degree of suspicion which the lack of information reached on the part of the legislators was a very serious obstacle in making appropriations easier, and the result was that we got more money for some things than we ought to have had and less for others, because of the lack of some direct method of putting these matters before the Senate. Now suppose that in place of that it had been possible for the Secretary of Agriculture to appear on the floor and answer directly in the body of the whole House the questions which arose. Suppose, for example, now it were possible for the House of Repre-

sentatives to put Mr. Burleson on the stand and ask him questions about certain items in his appropriation bill. The elimination of objectionable items would be very easy. At the same time, if any other cabinet officer were put on the stand when wise appropriations were asked for a defense of them on the floor would be very much in the public interest. This comes very close to me. For five or six years of my service in Washington it was the custom of the United States Senate to take the greater part of a week every year, in the effort to break down the Forestry Service by destroying its appropriation, lasting three to five days each year. During that time senators would, with all their prestige of office and with all the other prestige of legal knowledge, rise in their places and would tell what wicked things the United States Forestry Department had done, what acts of arrogance had been committed by the employes, and so on and so forth. The only method by which these allegations could be answered, which ninety-nine times out of a hundred were false, was by hook or crook finding some one in the membership of the House or the Senate, an individual who, for some reason, was willing to take the trouble upon himself to answer the attacks that we knew were coming, and then placing members of the Forestry Service in the gallery of the House ready to send down notes in support of the appropriation, and in answer to the individual statements as they were made. Of course, such a method is imperfect and almost beyond description. They almost succeeded in destroying the Forestry Service and would have done so had it not been for President Roosevelt and the fact that the Forestry Department in Washington had an unusually complete knowledge of facts of the field service. As it was we came through, but we came through under conditions which ought never to have been imposed on any body of men trying to serve the public, and under conditions which would have destroyed the department at once if it had not been for the Secretary of Agriculture appearing in person and giving the facts which he had. Now, no legislative officer, and that is no reflection on the legislature, it is simply an inherent fact, can probably have the knowledge that the executive department or any other branch of the executive department, or which the man who has the actual management and responsibility for it, has. Therefore, all that you can get, unless the executive officers themselves may appear with such information on the floor, is what some member of the legislature has been willing to take time from his other duties to acquire. Then there is another reason. The best defense of an appropriation, the best help to a good appropriation, and the best defense against a bad appropriation is necessary publicity. There is no method that has been devised, so far as my knowledge extends, that would so concentrate public opinion on the making of appropriations as the appearing of the Governor on the floor to defend that feature of the appropriation. The eyes of the whole state would necessarily be fixed upon the Governor and upon his executive heads during such a time. Then on the other side I believe that no method has yet been devised which would be so strong a check on the executive as the right of the legislators to question that Governor under circumstances where he would be obliged to answer. The lawyers here, as I understand it, would not be willing to accept the testimony of a witness without cross-examination; but, as I understand, the Governor would not be subject to

cross-examination. My view is that the addition of this amendment, and I base it on my own experience in executive matters, would promote the economy and efficiency in the appropriations and expenditures in our state and would prove as strong a defense as could possibly be presented in the Constitution against the abuse which was so common in our state legislature, and for that reason I suggest its adoption.

Mr. CARSON. Mr. Chairman: I have been very much interested in what has been said about the practical difficulties of obtaining information, useful and perhaps necessary, for the intelligent understanding of a proposition presented to a legislative body for affirmative action; but the language which the gentleman has used cuts more deeply into the vitals of our constitutional structure than perhaps is apparent upon the mere reading of the words. It might be optional under this language for the Governor or the heads of executive departments to appear before the legislature. What their voluntary appearance on the floor would mean, I do not know. If they came there to interrogate the president of the Senate or the speaker of the House or the members of the House as to what their intended action was going to be with regard to a bill, I think that at once the independence of the legislative body as a co-ordinate branch of the government would exert itself in very positive terms of refusal to give the information, and they could not be interrogated in advance as to what they intended to do, or even as to what they thought with regard to a proposition in which the executive might on the surface be presumed to be interested, and that presumption strengthened by the voluntary appearance of the executive officer to interrogate the legislature. But the other part of the proposition, that the Governor and the executive officers shall be subject to the call of the House or the Senate is something which would shake to its foundations those lines of separation between the departments which have been long established, not only because of the character of the difference in the powers which are intrusted to each co-ordinate branch of the government, but in direct violation of the decisions of the supreme court in regard to our legislature or any other branch of the government summoning the Governor to appear for interrogation before it. In the case—I will have to make this discussion extemporaneous without a chance to review authorities—in the case of the Commonwealth against Hartranft, where in the midst of a public exigency it was found that a legislative body would like to inquire into what might be termed executive secrets of great moment, an effort was made to serve a subpoena on the Governor with a *duces tecum* clause to produce certain papers for general information. It was held, in the opinion of Chief Justice Paxson, I may be wrong as to the judge who delivered the opinion, that was a thing which could not be done. Now, I know practically that so far as mandamus and injunctions are concerned, you cannot mandamus a President, you cannot enjoin a President. President Jefferson, in the Aaron Burr case, refused to obey the subpoena issued even by John Marshall for the production of papers in the case of even so important an offense as high treason. When the matter was brought to the attention of Marshall, he was big enough and of sufficient judicial frame of mind to recognize the impropriety of the exercise of any such power. In addition to that, how are you going to enforce it?

If a Governor refuses to obey, how will the House enforce it? If he simply folds his arms and says, "Gentlemen, I refuse the invitation and I decline to appear; the dignity and the independence of my function as Governor make it improper in my judgment to yield," it cannot be enforced. What an idle thing it is to attempt to issue commands, or what are apparent commands, unless the power to enforce those commands is behind it! The Governor, in the exercise of his legislative power, is intrusted under general law with either the power of approval, or refusal to join by disapproval, of charters of corporations for profit presented for his consideration. Conflicts arise between contesting applicants for charters, railway companies, electric light companies, in different jurisdictions, and one would come before the Governor for his approval of his application and another praying for its refusal. The question comes before the Dauphin county court. Can the Dauphin county court issue an alternative mandamus to the Governor, and say to the Governor, "Take up your pen and approve this charter, or if you are about to approve that charter, here is a restraining order which will prevent you from placing your signature on that paper?" Now, you cannot enforce it. The Governor is officially the commander of the army and navy of the state. In other words, you may read Spelling on Extraordinary Remedies, or books on the question of injunction or mandamus proceedings, which are of the highest authority, in the exercise of the sovereignty of quo warranto, the most tremendous weapon that the Attorney General can wield in the name of the commonwealth. But after all there are certain high officers which are beyond reach, and ought to be beyond reach, because it would be in the power of the legislature to subject the Governor to a peremptory call on the floor, because some rough-neck on the floor, or somebody who has no regard for the high office—I do not mean to say it in an improper sense—had no regard for the dignity and independence of the office, would subject the Governor to interrogation.

It is not as in the case of a witness in the box, where the question is not one of co-ordinate action between sovereign bodies legislating for a sovereign people, as is a dispute between parties over property, where the judge or the jury is charged with the duty of ascertaining the fact, and therefore the witness is very properly subject to cross-examination as to whether he has any special knowledge and whether he heard with his own ears and saw with his own eyes the fact to which he has testified. I am in all earnestness about this matter, because, while I appreciate very fully the difficulties which Mr. Pinchot has had in presenting appropriation measures, and meeting with indifference, coldness and perhaps with hostility, yet it seems to me whatever good might be accomplished by a free interchange, as if it were around a little table, the moment you strike opposition, sparks fly and interrogation becomes simply a contest. It is a contest for power. One department wishes to drive the other, but the other is in a natural attitude of resistance and refuses, and there is no power to settle the dispute. I think it would not only be an extraordinary departure, but it would really amount to such an amendment of the Constitution as would be revolutionary in its character, and therefore I am opposed to the amendment.

Mr. REED. Mr. Chairman: I do not know that I can add anything to what Mr. Carson has said, but I suggest to Mr. Pinchot the

practical consideration that, by bringing the Governor before the legislature he makes him at once a partisan and a defender of his budget, in which case he would probably use all the power of his high office and make the legislators cry worse than they do now in order to force the budget through. It seems to me that the Governor at least should be eliminated from this amendment. When he presents the budget he does not do it as being personally acquainted with every item of it, but it is a certain measure of responsibility on his part, and if it is necessary to interrogate anybody let it be the heads of the departments who are responsible for it.

Mr. CARSON. Mr. Chairman: May I ask some one who is familiar with the practice, Mr. Alter, perhaps would answer my question, has not the practice been for a chairman of a committee of either House to send to the executive departments and request information or for papers to be forwarded?

Mr. ALTER. Mr. Chairman: Undoubtedly.

Mr. CARSON. Mr. Chairman: If that is so, then why insert such an extraordinary method as this? I am quite sure that Mr. Pinchot did not realize the extent to which the extraordinary powers of enforcing such a budget could be exercised if his language should be adopted.

Mr. PINCHOT. Mr. Chairman: May I say just a word in reply? I am, of course, unable to meet Mr. Carson on the legal side, and can only answer him by saying that so far as the status of his point of view is concerned, and I believe Mr. Root supported such a provision in the New York State Constitutional Convention, and that Mr. Root's advocacy of it would be as strong a reason for as Mr. Carson's point of view would be against the constitutionality of it. I would like to call his attention also to the fact that there is no provision in this clause for the interrogation by the Governor of the legislators, but interrogation of the Governor by the legislature, which is different. As to the supreme court decisions, we are making or proposing to make in this body fundamental law which would be the guide of the supreme court. Therefore, what the supreme court has said in the past, under the existing Constitution, would, I apprehend, not be applicable as an argument against what we propose to undertake. I think we can assume the Governor would obey the Constitution and it would be unnecessary for the legislature to attempt to compel the attendance of the Governor. When there was a clear-cut provision in the Constitution the Governor himself would undertake to see to it that it was kept. Moreover, most of the civilized nations of the world contain in their constitutions provisions which are analogous to this one. I realize that we do not have a responsible head of the government in the same sense as the English, French and Italians have. On the other hand, under those governments it is found to be appropriate and right for the head of the government to appear before the representatives of the people and answer questions. I apprehend here again there would be no danger of loss of dignity on the part of the Governor, especially as we may assume, under our government, the Governor would be supported by the majority party in the budget which he undertook to prepare, and not refuse to pass a bill originated by the leader of the majority, which the Governor is. The Governor must appear in person. I realize that many measures are passed, and especially many appropriation measures, without any such at-

titude on his part or on the part of the majority; and yet it is the party in power that is responsible for the legislation. Therefore, if a method can be devised that makes that responsibility more clear and enables it to work out for the public benefit, I see no reason why the fact should not be recognized. Perhaps all I say on the subject comes down to this. I believe on the basis of experience the present method of making appropriations is clumsy and ineffective and lends itself to such plentiful abuses that under a plan of this kind, which has the sanction and authority of the practice of the larger part of the civilized world, many of those abuses could be done away with.

Mr. THORPE. Mr. Chairman: There is one instance that might properly be recalled. This proposition to have the executive or the appointee of the executive appear before either branch for inquiry or for explanation was tried once in our country. It was tried in the Confederate Congress. I believe the only record made of it was by a senator from Texas, who tells us very plainly that it was faulty. To use his own language, as I recall it, he said that the executive or the representative of the government, who was the Postmaster General, was torn all to pieces. I do not think we ought to pass the matter without some consideration of the principles that may have been incorporated. But since 1860 apparently in many Constitutional Conventions this question was discussed. It is nothing new. A few days ago a member of this Commission suggested that this thing should be done. The fine arguments given by the gentleman from Dauphin, Mr. McCormick, and given by Mr. Carson answer the constitutionality, and if we are going to turn to precedents we have none, except that one in Richmond; and if we turn to precedents in foreign lands we turn to precedents which do not apply to our state, and which do not apply to our system of government.

Mr. FISHER. Mr. Chairman: May I ask Mr. Pinchot whether or not he has any experience in mind, any experience in our state which suggests the amendment he is offering, whether or not there has been any difficulty on the part of the legislature in securing the information desired from the heads of departments or the executive?

Mr. PINCHOT. Mr. Chairman: There has not been any case to my knowledge in which information was refused, but I am confident from my own experience that under the principle that obtains at present it is a very unfortunate method of getting it before the legislative body. What we do in a sense is to exclude the president of our corporation from the meetings of the board of directors, something that no business organization ever would think of doing, but simply allow him to write letters instead of calling him into the board room where the members of the board can get from him the information they need to pass intelligently on the problems before them. I do not know that members of the executive department in Pennsylvania have suffered severely in the past from the inability of their heads to get proper information before the legislature, and that work greatly needed to be done in the state has failed to be done for that reason. I apprehend that under any state government where the present system obtains that would be true. As to what Dr. Thorpe has just said, I realize this matter is not in effect in this or in any other state government in the United States. I am inclined to believe, however, that the failure during the Civil War by the Confederacy is not proof that it is not a good thing. I might differ from

Mr. Root in certain respects, but not with the conclusions reached by him and his associates in the Constitution which was prepared by them for the state of New York.

MR. ALTER IN THE CHAIR.

Mr. SCHAFFER. Mr. Chairman: I think there is no matter that can come before this Commission, and no matter that can come before the people for their final adoption or rejection, that transcends in importance, so far as our form of government is concerned, the proposition that Mr. Pinchot makes so far as the Governor is concerned. If you will read the provisions of the Constitution applicable to the Governor, the provisions of the Constitution which make him the commander-in-chief of the army and navy of the commonwealth, and the provisions of the Constitution which define his general duties, that is to say, that the supreme executive veto shall be vested in the Governor, who shall take care that the laws be faithfully executed, you can see that the intent in framing the government was that the Governor should be absolutely free from the control of the legislative or the judicial branch of the government. That runs all through the form of government, not only for the state, but it runs through the form of government as it exists in Federal affairs. Mr. Carson has called attention to the striking case that took place in this state when the power of the judiciary over the Governor was put to the test, and while I have not read that case for a long time, I do recall the graphic story told to me by Judge Orlady, now president judge of the superior court, who, as I recollect, happened to be in the courtroom in Pittsburgh when the case of the Commonwealth against Hartranft was called. The proposition was, whether the court of Allegheny county investigating the railroad riots of 1877 had the right to summon the Governor of the commonwealth before the grand jury in order that he might give testimony as to why he called out the troops and as to what, if anything, was back of the call. As I recall Judge Orlady's statement of what took place, George Lear, then Attorney General of the commonwealth, appeared at the bar of the court, and informed the court that he was the Attorney General of the commonwealth; that a subpoena had been sent for the Governor, summoning him to appear before the grand jury of Allegheny county, and that if the purpose of the court was to enforce that subpoena by further legal process, he would instruct the Governor that it was not only his right but his duty to call on the organized armed forces of the state to resist the sheriff of Allegheny county in any endeavor to bring the Governor before the grand jury. I can see where the situation would arise as between a hostile legislature or a hostile house of the legislature and the Governor, which would put the Governor of the state really to the test of power in the co-ordinate and separate branches of the government, with no tribunal to settle where the rights were. For instance, the Governor is summoned before the legislature and he is asked a question he ought not to answer, because there are many questions which could be asked of the Governor that he ought not to be required to answer; just as there are many questions that could be asked the President of the United States that he ought not to be required to answer. If the Governor is asked a question and declines to answer, then he is haled before the bar of the House. For what? For one

of two things, either that he may defy the House or that the House may commit him for contempt. In either event there is presented such a clash that the very foundation of the government would be subverted. Now, it is in many of the undefined powers of the Governor, as it is in many of the undefined powers of the office, for instance, I happen to occupy at this time, that its greatest powers exist, because it will be possibly a matter of information to this Commission, that nowhere in the Constitution are the powers of the Attorney General defined. They are impossible of definition, because there are exigencies which arise wherein the Attorney General must act in the broadest kind of way, where any attempt to limit or define what the powers should be would operate to the greatest detriment of the commonwealth. Therefore, it does seem to me that however this amendment may be acted upon so far as all other state officials are concerned, it ought not to be within the power of the legislature either to summon the Governor before it or to summon the Attorney General before it or to compel either the Governor or the Attorney General under the penalty that the legislature had thought it might prescribe to answer questions which ought not to be answered in the public interest and for the public good. I can understand how in a body, and I think that is the practice in the English Parliament, where the members of the cabinet sit as members of Parliament, I can understand how the right of interrogation, though a limited right as I recall it, because it is always within the power of the minister, or always within the power of any member of the cabinet, to decline for the public good or decline in the public interest to answer questions. As I recall, Lord Kitchener was summoned for interrogation before the house and declined to answer certain questions relative to the preparations for war. So I can readily understand how the Governor, summoned on the budget that would have an item that was intended to provide for the organization of the militia or for the organization of the state constabulary, might very properly decline to answer as to what uses were to be made of the forces of the state in pursuance of the appropriation that was set forth in the budget. Furthermore, who would, and who could, determine whether questions that were asked the Governor were relevant or irrelevant or material or immaterial to the particular item in the budget under discussion at the time he happened to be interrogated? Would that be for the speaker of the House or the president pro tempore of the Senate to define whether or not the interrogating member was asking relevant and proper or irrelevant and improper questions, or would it be determined by the body of the House voting on the question? Therefore, when you come to consider this question as it leads down, as Mr. Carson says, into the very vitals of government, it seems to me that if this shall be adopted, then the independence of the three co-ordinate branches of the government is destroyed, because the Governor would no longer be independent if the legislature can coerce him. He would not be independent if the courts coerce him, and the sole purpose, as I read the Constitution and understand the traditions of our people, which are back of and underline all constitutions, is that the three branches of the government shall be separate, distinct and independent each of the other.

Therefore, it does seem to me that before voting in favor of this amendment, including the Governor, there ought to be pause given in the minds of every member of the Commission. If the proposition that members of the Governor's so-called cabinet should have seats in the general assembly for the purpose of debating or for the purpose of explaining in a way similar to the form of government that exists in Great Britain, in France and other European countries, then it would be a different proposition. But the analogy as between a witness under cross-examination and the Governor called before the bar of the House does not pertain. My own experience is that as we get older cross-examination is used by all lawyers less and less. And suppose the interrogator, particularly with a man charged with great responsibilities, as the Governor would be charged, a skillful interrogator, should put questions to the Governor that could not be answered categorically, yes or no, and which would necessarily involve the Governor on the floor of the chamber he happens to be in, in an argument in order that he might cast, or attempt to cast, the eye of suspicion or uncertain innuendo, that would originate in the skillful, adroit and malign questions that were hurled at him. And for one Pennsylvanian, I think it is of the most vital importance as this state grows in population, as this state grows in wealth, and grows as it has financially, having greater and greater responsibility, I think it is vitally essential that the Governor of the commonwealth shall be as independent as he has been in all times past, and that he shall not be the subject of attack by covert innuendo or by suggestions of any man who temporarily may differ with him or temporarily may be not in accord with the Governor's thought. But fundamentally, and the real reason why I left the Chair to come here on the floor of the Commission, is because of my thought and my conviction that to summon the Governor in the way this resolution would summon him and put him before the House or the Senate in the way that a hostile majority, or a hostile movement in the body, would be able to put him before the House or the Senate, would be such an invasion of the traditional, tried-out form of government we have as would amount, as Mr. Carson says, to a real revolution in government.

Mr. FISHER. Mr. Chairman: This amendment seeks to do two things, it appears to me. In the first place, it gives the Governor and heads of the executive departments the absolute right to be heard before the legislature. On the other hand, it gives the legislature the absolute right to subject the Governor and the heads of the departments to interrogation. In other words, you break down the line of demarcation between the two branches of government and give the legislative branch absolute authority to exercise power over the executive branch, and, conversely, the executive absolute power over the action of the legislative. I take it that that is the point that has been particularly raised in the mind of ex-Attorney General Carson and of our present Attorney General, the Chairman. That is a dangerous situation to create. Will it not instead bring about the very situation objected to by the framer? Will it not create friction between the two departments of government? It will prevent the accomplishment of the very thing Mr. Pinchot has in mind.

I ask him whether or not there have been any incidents in our government which would justify a constitutional provision of this kind, and he answers no. Within my own legislative ex-

perience and knowledge, covering more than twenty years, I have never known of any difficulty existing between the Governor and the legislative branch with respect to the interchange of information that bears upon the subject of appropriations. If it can be proven that no troubles have existed of this sort in all the history of the commonwealth, is it necessary to introduce an amendment of this kind which is fraught with so much danger?

Another question that arises on the proposition is encroachment by the executive upon that what has hitherto been purely legislative power. It has its reason, however, in the fact that knowledge with respect to the income and expenditure of the government comes quite peculiarly within the ken of the chief executive. He is the head, through the power of appointment, of most of the executive departments of the government. He has the constitutional power, I believe, to call on every executive head of the government for whatever information he may desire. Now, because of that peculiar knowledge it is thought wise, I believe, will be thought wise by this Commission, to take away the power from the legislature of proposing this kind of legislation and allowing it to be vested in the Governor. Hitherto the Governor exercised great power because of his veto power over this sort of legislation after it had been passed upon and submitted to him by the legislative branch. And now, if this amendment goes into effect, will it not result in great confusion? The power of preparing and submitting a budget, under our proposed amendment to the Constitution, vests in the Governor, not in the Governor and the heads of the executive departments. Now, when legislation becomes a subject of action in the legislative branch, will it harmonize with the thought which prompts the budget system to give the power to every executive head to step into the House of Representatives or into the hall of the Senate and demand his constitutional right to be heard on any of the items in the bill? He has no voice in the preparation of the budget. The Governor calls upon the heads of the executive departments for the information upon which he bases the bill which he is required to prepare, but this amendment proposes to put into the hands of the executive heads the same power that is vested in the Governor of appearing in both Houses at any time that they may elect and demand their constitutional right to be heard. Now, it seems to me that there would be much confusion arise among the appointive executive heads of departments and the Governor. I can easily see how the Governor could soon settle that sort of difficulty. But we have some elected heads of executive departments, and suppose there is a conflict between the Auditor General and the Governor or between the State Treasurer and the Governor. These two offices are very important; they are very vital; their use could easily be exercised so as to greatly embarrass the executive. The heads of these departments could exercise the right under this amendment to appear before the legislature and embarrass the Governor, and the Governor's budget bill. Now, it seems to me if any body should be given the right to appear before the legislature and defend the bill, it should be limited to the proponent of the bill. But the arguments of the ex-Attorney General and the present Attorney General have convinced me on very broad grounds that it would be inexpedient to permit the Governor to be called before the legislature on its mandate, and if he is eliminated then it seems to me that the amendment ought not to stand at all.

As a matter of expedience, the heads of the departments ought not to be permitted to exercise or be subject to such power, and on the broad ground indicated in the addresses of Mr. Carson and our Chairman, the Governor ought not to be subjected to the authority of the legislature.

Mr. PINCHOT. Mr. Chairman: I hesitate to impose so often on the patience of the Commission; but since the gentleman from Indiana, Mr. Fisher, has directed to me one or two direct questions, perhaps the Commission will bear with me just one more moment. I would like to read the amendment and see what it actually does mean. "When the appropriation bill is under discussion in either House, the Governor and the heads of the executive departments shall have the right to be heard and shall be subject to interrogation in relation to such bill." Therefore, it becomes purely a question of defense and attack upon the appropriation bill itself. Now, all of the things, in my view, which the various gentlemen who have spoken against this amendment have raised are things that they dread to see happen. The Governor is being attacked in both Houses without the opportunity of answering in this case, where, if this particular bill was up, he would have the opportunity of answering them. No additional confusion could possibly arise from a face to face discussion of a matter of this kind, instead of the present practice which amounts to writing letters to each other. I am unable to see how it could be brought about. It seems to me that an open discussion of this question would inevitably tend to do away with confusion and I should say also that I see no reason in the world why the Governor upon being interrogated upon this clause would not have precisely the same right if the public welfare would require him to keep silent as to a particular subject, as the President has now under the form which is in use. My advocacy of this matter is because it seems to me a more common sense, business like method of procedure in all states which would inevitably result in the elimination of the difficulties and vastly improve the work of the legislature in making appropriations. It seems to me particularly along the line of plain business sense, and it is only, of course, from that point of view that I can speak. I do not have the experience to speak upon it from the standpoint of its constitutionality. No business organization would think of excluding the president from any question and making suggestions to the board of directors. Now, why should we prevent the possibility of the same thing in dealing with the business of the state?

On the question,

Will the Committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee adopt the report?

MR. SCHAFFER IN THE CHAIR.

Mr. FOX. Mr. Chairman: While Mr. McCormick was speaking he suggested that the question should be considered when the charitable appropriations were considered. I feel that we have not quite reached the point which he suggested was the real difficulty, that is a period covered by the thirty days after the adjournment of the legislature. Unquestionably if an appropriation bill is passed during the

session of the legislature and the Governor does not approve it within ten days, it becomes a law. But the abuse which Mr. McCormick has dreaded is that the Governor after the adjournment of the legislature is loaded down with a large number of appropriation bills which he is obliged either to approve or disapprove as he may see fit, and assume the entire responsibility. Now, it seems to me that what we want to guard against is not to put that responsibility entirely upon the Governor. I am not prepared at this time to suggest any practical method by which it may be done. It has occurred to me, but I do not know whether it is practical, to provide that after a period of thirty days, if the Governor disapproves, that he may recall the legislature for the purpose of passing again over his veto, if it pleases, the items which he disapproved. The suggestion that I desire to make now is that the committee having this matter in charge, pending our consideration of it, will consider some method of meeting just this difficulty. I, therefore, move that Committee No. 1 be directed to consider whether it is practical or wise to amend it to cover just this condition.

The CHAIRMAN. The Chair happens to be a member of that committee, and he would say that the committee has been considering, and has been able to develop no plan to take care of it. It has been suggested many times that the legislature adjourn for thirty days and then reconvene of its own accord.

Mr. McCORMICK. Mr. Chairman: May I ask one more question along that line? Would it be possible to fix a date in the Constitution upon which this bill should be passed so many days after the convening of the legislature?

The CHAIRMAN. If the interrogation is addressed to the Chair, I would say that that was not possible. That is something that you could not control. You cannot limit the debate of the legislature and at the same time have full and intelligent action; but, it does seem to the Chair, in answer to Mr. McCormick, that this provision will prevent consideration of other appropriation bills while the budget bill is before the House, and will speed the action as fast as it can be speeded, and that the budget will be placed before the Governor more than thirty days before the adjournment of the legislature, because there will be more than thirty days' work after the budget is passed for the legislature to do.

Mr. McCORMICK. Mr. Chairman: I will ask the Chair whether the Governor has any right now to recommend legislation upon this or any other subject.

The CHAIRMAN. My recollection is that he can do so.

Mr. REED. Mr. Chairman: Why then fix March first as the date for presenting the budget? The legislature will then have been in session nearly sixty days.

The CHAIRMAN. The Governor does not take office until—the present Governor took office on the twenty-first of January, and the time is too short to fix it earlier than March first to give the Governor sufficient time.

Mr. REED. Mr. Chairman: He can present it before if he has it ready.

The CHAIRMAN. The amendment to the Constitution is that he must present it on or before that date.

Mr. PEPPER. Mr. Chairman: I have no desire to prolong the discussion, especially as I came late to the session; but I am loath to have the important question which has just been discussed with reference to the appearance by the Governor in support of the budget recommendation disposed of without at least consideration of the possibility of substituting the resolution that I am about to propose for the one that has been voted down. If I am so fortunate to have a seconder, I shall ask that it be referred to the committee for such consideration as it sees fit to give it. It is this: "When the appropriation bill is under discussion in either House, the Governor and, at his invitation, the heads of any executive departments shall have the right to be heard upon the pending question." If that is seconded I merely ask for reference to the committee.

The CHAIRMAN. It can be threshed out here. We are in Committee of the Whole.

Mr. PEPPER. Mr. Chairman: Very good, sir. I made that suggestion merely that the debate might not be prolonged. I do not feel at liberty to discuss the question a length, because I have not heard the arguments that were advanced in opposition to Mr. Pinchot's motion; but I take it that the opposition to that motion was based principally upon three grounds. In the first place, that it was undesirable that the heads of executive departments should have the constitutional right to be heard upon their own application. In the second place, that there was no limitation in the resolution respecting the subject-matter upon which either they or the Governor might be heard. In the third place, that it was for various reasons impracticable that either the Governor or heads of the executive departments should be under summons from the legislature to answer interrogations as if they were under cross-examination. I accordingly present this suggestion which, it seems to me, meets these three objections. It provides, in the first place, that the heads of executive departments shall have the right to be heard only upon invitation of the Governor; that is, that when the heads of the executive departments go to the legislature it is the Governor going in the person of his representative and at the Governor's invitation. I have limited the subject-matter upon which either the Governor or the head of a department can be heard on a pending question; that is, matters arising under the appropriation bill, and I have stricken out the provision which summons the Governor or the head of an executive department and the right to subject him or them to interrogation.

The CHAIRMAN. Is the amendment seconded?

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. McCORMICK. Mr. Chairman: Has the Governor not now the right to be heard upon any question he desires to submit to the legislature by message?

The CHAIRMAN. The Chair's understanding is that he can either appear in person, as the President has done, or by written message to be heard on any question.

Mr. CARSON. Mr. Chairman: Is it not in the nature of a declaratory section?

The CHAIRMAN. So it seems to the Chair. It may be well for the Committee to know for its information that at the last session

of the legislature the Auditor General appeared before the session either on request or of his own volition.

Mr. PEPPER. Mr. Chairman: In answer to the question of ex-Attorney General Carson, I should say that this is not merely a declaratory resolution, inasmuch as it gives the right to the Governor to appear in the person of the head of a department, and not merely as at present in his proper person.

Mr. CARSON. Mr. Chairman: That is the interpretation put upon it by Mr. Pepper. I see more in the resolution than my astute friend perceives.

Mr. PEPPER. More or less astute friend.

Mr. CARSON. No; I put it the other way.

Mr. GORDON. Mr. Chairman: Like the gentleman from Philadelphia, I have not heard the previous discussion. I do not know how wide a range it had, but in democratic government it is very generally regarded as inappropriate to have the executive appear in the legislative body, and for excellent reasons. Possibly some of those reasons apply to the executive himself in order that he might be relieved from the embarrassment and the very often humiliating interrogation to which he might be subjected. But more fundamental than that is undoubtedly the opposition to having the executive, with his vast power of reward and power of punishment, the possibility of his awe-inspiring if not persuasive presence having a particular effect upon an assembly either to intimidate it or stimulate it unduly to pass the legislation he desires. But I do not believe that thought is altogether one that is without its present impressiveness. It might be injudicious to discuss august dignitaries but I can very well remember when there was a very wide wave of criticism passing over the country when the present incumbent of the Federal executive office too frequently and too pertinaciously appeared even in the outer chambers of the committee rooms of the legislative halls at Washington; not content with the revival of the practice of addressing the assembled body of Congress in person rather than by communication in writing, he frequently sat in an adjoining room during debate, while measures were pending in which his administration was interested. There were some venerable democrats like myself who thought it was rather an invasion of the rights of the independence of the legislative branch of government. I thought so then and I think so now. The Governor is secured by the Constitution in all his rights of free address to the assembly. He may at any time communicate to them the state of the Union or anything else that he thinks desirable for the legislature to hear. I do not see any reason, therefore, why he should be invested with the right, his own right, to walk into the legislative body and demand to be heard during the discussion of a matter of legislation. On principle, therefore, because I have reached the stage when old principles present more attractiveness to me possibly than new ideas, on principle I am opposed to this resolution. I can see no good that it can accomplish. I can see much harm that might be accomplished. The legislature, although it is not a modern idea, the legislature is an important body in democratic government. It is more representative than the executive, more representative in numbers, and more independent in that the members come from all parts of the state, and it is the real depository of power, and I believe is best

to be trusted with the expression of the public will. Therefore, I see nothing to be accomplished by this resolution that would be helpful to the free and untrammelled action of the legislature, and I shall vote against it.

Mr. PEPPER. Mr. Chairman: I think what Judge Gordon has just said is a powerful statement of reasons which might induce the Commission to reject the executive budget. It seems to me that what has been said might well be applicable to a proposal to invest the executive with the responsibility of initiating legislation by proposing for the consideration of the legislature the budget which is to be the exclusive measure of appropriation. If you are going to adopt the budget system, however, and if you are going to place responsibility for the action of submitting this budget to the Houses of the legislature for consideration, it seems to me as a matter of common sense he should have the right not merely of presenting it in person, but in the person of a representative, that representative being the head of an executive department, who would appear in the discharge of the responsibility which you have laid upon him. It seems to me that the arguments that you may adduce against the executive concerning himself in legislative matters are arguments that are inapplicable to the case in which you have specifically conferred upon the executive the duty of concerning himself in specific legislation which under the terms of the resolution must be pending and under discussion before the right to be represented through the head of a department is claimed. It must be a matter of common knowledge that when a budget is prepared and submitted the intelligent discussion of that document can best go forward if the person importantly concerned is present and can explain its provisions. This will be the case with all those budget items affecting the various executive departments, and it seems to me that it ought not to rest upon a matter of invitation from the legislature, which may be restless at the imposition of the budget system, to permit the attendance of the person in the whole commonwealth best qualified to give the information which ought to be before the law-making body before it acts. I submit that there is need, if you are going to have the budget system, for some such provision as the one embodied in the resolution.

Mr. GORDON. Mr. Chairman: May I call attention to the provision of the present Constitution on the powers of the executive? First, he is given power to demand information of any executive department respecting that department. That is his right. He may demand it, and as supreme executive compel compliance. "He may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices." Now comes the clause which relates to his communication to the legislature. "He shall from time to time give to the general assembly information of the state of the commonwealth and recommend to their consideration such measures as he may think expedient." It seems to me that those two things cover all the powers that he ought to have and the duties that he ought to have with respect to the recommendation of legislation.

On the question recurring,

Will the Committee agree to the amendment?

It was not agreed to.

On the question recurring,
Will the Committee adopt the report?
It was adopted.

ARTICLE IV, SECTION 16.

The CHAIRMAN. The next section in order for consideration is section 16 of article IV of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 16. The Governor shall have power to disapprove of or reduce any item or items of any bill making appropriations of money, embracing distinct items and the part or parts of the bill approved shall be the law, and the part or parts of appropriation disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

On the question,
Will the Committee adopt the report?
It was adopted.

ARTICLE XIV, SECTION 5.

The CHAIRMAN. The next section in order for consideration is section 5 of article XIV of the Constitution, the report of Committee No. 3 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 5. All county officers shall be paid by salary only for services performed for the county, state or any political subdivision of either, and all laws providing any other form of compensation for such services are hereby declared to be repealed.

On the question,
Will the Committee adopt the report?

FEES OF COUNTY OFFICERS.

Mr. CARSON. Mr. Chairman: I should like to interrogate the chairman of that committee. There was some discussion—Judge Gordon will you kindly refer me to that clause of the Constitution in regard to county officers, the terms of the officers fixed by the Constitution, certain county officers like the sheriff and the coroner?

Mr. GORDON. Mr. Chairman: The page is fifty-nine of the Compilation.

Mr. CARSON. Mr. Chairman: The Committee of the Whole will recall that when we had the section of the report from Committee No. 1 under discussion in regard to the limitation of the power of the legislature, particularly that of section 13, which will be found on page 21 of the Compilation, the provision that "No law shall extend the term of any public officer or increase or diminish his salary or emoluments after his election or appointment," I took occasion to point out that use had been made of that provision to sap the independence of the judiciary by denying to the legislature the right to give judges of the court a living salary and that therefore I suggested an amendment which I think the Committee of the Whole has already adopted by inserting the words, "No law shall extend the time of any public officer whose term is fixed by statute."

Then Judge Gordon very correctly and to me very obligingly called my attention to article XIV with regard to county officers and suggested the fact that inasmuch as the terms of the county officers were omitted in this section of article XIV, as fixed by the Constitution itself, that we might unintentionally extend our benevolence

to officers whom we did not intend to protect. I think the point was well taken by the Judge. "All county officers shall be paid by salary only for services performed for the county, state or any political subdivision of either, and all laws providing any other form of compensation for such services are hereby declared to be repealed." Would it not be wise right there to kill the matter by providing that the salary of all city and county officers shall not be increased or their term extended by any statute? Then you take that out of the dangerous extension of what should be a proper position of the judiciary, but which would be with regard to merely subordinate officers a highly improper provision. I, therefore, would move to amend by the addition of the words, "nor shall the salaries of such county officers be increased or their terms extended after their election or appointment."

Mr. FISHER. Mr. Chairman: In the absence of General Carson, section 13, on page 25 of the Compilation, to which he refers, was referred back to Committee No. 1 and reported out so as to meet this thought and obviate the criticism offered by Judge Gordon.

Mr. CARSON. Mr. Chairman: If that has been done I am perfectly satisfied.

Mr. FISHER. Mr. Chairman: When it came before the Committee of the Whole, we found we had failed to meet the situation and the section was then referred back and is now in the hands of Committee No. 1.

Mr. ALTER. Mr. Chairman: The purpose is to amend it so as to exempt judges from having their salaries diminished. Now then, the objection, if General Carson will permit me to say, to his present amendment is still open, for it would allow the salaries of persons elected to state offices whose terms are fixed by the Constitution to become the subject of increase or decrease, the Secretary of Internal Affairs, and so forth. I feel that the whole question can be met best by the omission of this section 13 which is now in the hands of Committee No. 1.

Mr. CARSON. Mr. Chairman: Very good. My purpose is not to extend any advantages to any officers whose terms being exceedingly short are not the victims of a change in the value of money; but with regard to judges, whose terms are long, whose terms are fixed by the Constitution itself, and whose usefulness to the public is increased by their experience in office, so that the older the judge becomes, because judicial wisdom ripens very slowly, the better equipped he is to stay there. The longer the judges are in service the better equipped they are to stay there. If it had not been for the decision which was secured confirming the constitutionality of the act of 1903, the judges today, in face of the war prices would be living on the salaries of 1873, the bench would have been swept absolutely. The judges could not stay there, but we would have incompetents there, eking out a miserable salary. Now then, it is to guard against a repetition of such a crisis, and it was a very urgent one, that I am trying to provide against. In regard to the county officers, their terms being short, I repeat it is a very proper provision that their salaries should not be increased or diminished during their incumbency in office, and if the committee has fixed that safely, I am perfectly willing to vote for the proposition as it now is. I withdraw my motion to amend.

The CHAIRMAN. The Chair called the attention of the Commission, I think it was last week, to the situation that will exist in the revenues of the state if such an amendment is adopted, and the peril that the state will be in, and the immense additional costs that the state must be subjected to, because if it has no means of creating some other medium for collecting its revenues, which are now being collected by county officers, who receive a fee for it, the increased cost to the state will be very great. For instance, I would say, I do not know just what the expense will be on the collection of the inheritance tax, how much it will be increased, but very greatly. At present the inheritance taxes are collected by the registers of wills of the different counties, for which they receive a small commission on the amount that they collect. This amendment would repeal the act of 1919, providing for the collection of the taxes, and providing for the payment of fees to county officers for services performed for the state, and is, therefore, a very important matter for consideration.

Mr. ALTER. Mr. Chairman: I would like to offer an amendment by inserting at the end of the third line, as the section appears upon the calendar, "except for the collection of state revenues."

Mr. McCORMICK. Mr. Chairman: What objection could there be to have the state pay salaries to those individuals of the same amount as they now collect through a fee system?

The CHAIRMAN. It would be very difficult to work out a scale of salaries, particularly when you come to the inheritance tax.

Mr. CARSON. Mr. Chairman: Having been absent last week, I have not had the benefit of listening to debate on this particular subject, if there was debate. If this amendment is aimed at abolishing what we call the fee system in our counties, I certainly am in favor of destroying that fee system. Why a state officer collecting collateral inheritance taxes should receive for his services a percentage of the amount collected, passes my comprehension. The service is the easiest to perform. Not a single auditing judge of our orphans' court will pass an account of an executor without the production of a receipt for the collateral inheritance tax, duly countersigned by the Auditor General.

The CHAIRMAN. The gentleman forgets that there is a part of the state west of Overbrook, where we do not have courts of that kind.

Mr. CARSON. Mr. Chairman: That I understand. That may be, but if there is anything that is a primary duty resting on an executor, it is to pay the collateral inheritance tax. The auditing judge or the auditor of his account demands first a receipt. It is the very first thing that the executor pays. He pays it even before paying the undertaker, because prompt payment entitles him to a discount on the tax paid. One hundred thousand dollars in the county of Philadelphia alone for a service which automatically performs itself, and is taken care of by the auditing judge, is, I think, not only highly improper but a very censurable misapplication of the funds of the state. There is no service performed by any collecting agent. The suggestion of the gentleman from Dauphin, Mr. McCormick, is a good one. If a distinct service is rendered by a county officer for the state of Pennsylvania, let his salary be fixed. If the register probates wills in Philadelphia county for the sum of ten thousand dollars a year, why cannot he readily perform the service for the state of Penn-

sylvania? He does not go out of his office. The money is thrust into his hands. All he has to do is to hold out his hand for it, because the money is thrust into it. The state might pay him for that service, a liberal sum, perhaps ten thousand dollars. That would be twenty thousand dollars for all services; but to leave a situation open to a compensation beyond all reason, probably amounting to one hundred thousand dollars in fees, not to correct a situation such as this, seems to me loss of an opportunity to correct an evil which for years has been a crying scandal in our state.

Mr. FISHER. Mr. Chairman: It seems this provision is for the benefit of the smaller counties and not for the larger counties like Philadelphia. Now, the matter of collecting these taxes, to which General Carson referred, is not quite as simple as he seems to have in mind. Up around my section there is no one that is going to thrust his money into the hands of the tax collectors. It is necessary that we have appraisers, and it is the duty of the recorder and the register of wills to see that those appraisers are appointed, and it is their responsibility to select the proper men who will act conscientiously and see that the state gets the proper valuation.

Mr. CARSON. Mr. Chairman: Then let them be paid a salary, but abolish the fee or the percentage.

Mr. FISHER. Mr. Chairman: Under the old license system, of which, of course, the state has been relieved, it was the duty of the treasurer of the county to collect the fee and handle the funds and remit, and all that sort of thing. There is considerable responsibility in getting the returns, in taking charge of them, and in giving bond for them, and it is not a service which the state ought to ask of an individual gratis. Now, in the smaller counties the fee system was in vogue. I am just as much opposed as General Carson to the evil of the fee system, and during my service here I earned somewhat of a reputation by the introduction of bills for the abolition of fees and for the payments of salaries to state and county officers. But there is a practical difficulty in some counties. Take a county like Cameron, and other smaller counties. I do not know about Pike county, but some one here can inform us; there are smaller counties in the state where the amount of labor to be performed by officers is very small and they devote only a part of their time to it—the treasurer for instance, the sheriff and the coroner. Now, if you abolish the fee system you open up the way to a more extravagant remuneration than exists today. You will find considerable opposition on the part of the taxpayers in such localities as that to a flat salary provision in the Constitution. I think it would be wise for us perhaps to classify the county on the basis of a smaller population than the present provision of the Constitution and leave the provision stand. Perhaps the difficulty that General Carson has in mind could then be worked out. With this in view, I move you that we amend the report of the committee by substituting the original provision of the Constitution, with the classification reduced to counties of one hundred thousand inhabitants instead of one hundred and fifty thousand inhabitants. I do that merely for the purpose of raising the question, if it can be worked out without complication. I think we ought to abolish the old system, but I have serious doubts in the smaller counties.

Mr. CARSON. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. GORDON. Mr. Chairman: The committee evidently had in view in reporting this section the total abolition of payment by fees for any public service. That has heretofore been the prevailing idea of the framers of our present Constitution, carried out almost into full effect, but not quite. With respect to county officers, it was required that all fees should be paid into the treasury and that the officer should be paid by salary only. But it also required that in certain counties if the fees which he collected were paid into the county treasury and did not amount to the sum which he was entitled to as salary, he could not get all, but only as much as the fee amounted to. But the fee system, which the report of the committee aims at, is an ancient one and a fundamental one in all governments; and with much respect for the Chairman of this body, the presiding officer, and the gentleman from Allegheny, I am obliged to say that I think any system which regulates the collection of taxes by the fees of officers is wrong and full of danger. I do not want to be sophomoric, but it is within the reading of all the studious members of this body, the great abuses, which, in France, especially under the farmer-general, brought about directly the situation which shook the world, the revolution of that state. The sovereign farmed out the collection of taxes to favorites. They got fees in some cases, and in some cases they paid the taxes outright and oppression followed such a method of the collection of taxes. It always will. Diligence on behalf of the taxing power is well enough, but at the same time the collection of public revenue, the collection of the taxes paid by the people, exacted of them by virtue of law, should all go into the treasury. No part of the fund should be halted on the way to the treasury, and go into the pocket of the collecting officer. Today by virtue of more humane government, by virtue of the publicity which attends all public officers, also the perfection of government as a science, there should not be any great oppression; yet the vice stands. The vice stands if you pay a public officer for his services in accordance with his diligence in collecting the taxes.

Let me suggest what might exist very well if that were so. If the state paid him for his diligence in collecting the taxes, you make the taxpayer a debtor against the state for his inaction and for the noncollection of the taxes, and that is exactly what occurred in the past in France and in Great Britain and in every other state where the taxes have been farmed out. I am not in favor of this because of that principle. I am not in favor of it also for this further reason that the people do not know what the return to the officer is, and there is a possibility of enormous compensation for an odious service because excisemen and taxcollectors have never been popular. I may leave the exciseman out; if prohibition continues he will be *functus officio*. In the past the taxcollectors and the excisemen have never been popular. If the men who collect the taxes are paid a definite sum they are not subject to this keen scrutiny, and there would not have been the enormous returns that some one referred to if it had not been for the diligence of some municipal officer in Philadelphia, if it would not have been known that a very amiable officer, the register of wills in that county, made one hundred thousand dollars a year, very nearly that, for passing on certain taxes that came into his hands

from the city of Philadelphia to the state treasury. This enormous sum was only disclosed because some one tried to enforce the Constitution in spirit, and the supreme court afterwards said that the law must be enforced in letter and not in spirit.

Mr. FOX. Mr. Chairman: I come from one of the smaller counties, which, until a very recent period, had not reached the one hundred thousand class, but I nevertheless am very heartily in favor of this section. I agree with my colleagues that the fee system is an abuse, and I can see no reason why the legislature in its wisdom when fixing the salaries of the various officials did not take into consideration the long-established practice of having the register of wills collect the collateral inheritance tax and include in his salary enough to cover the compensation for that service. I think that was the purpose of the act which fixed the salary of the register of wills in Philadelphia, and it was to meet that very abuse that the act was passed. I regret that my friend, Judge Gordon, feels as he does about the opinion of the supreme court in the Sheehan case. Unfortunately, I wrote that opinion myself, though I can assure him it was a very unpleasant but an unavoidable thing, not only for myself, but also for the other members of the court to decide as they did. I think if any one thing was needed to persuade me that we had a vicious fee system, it was the study which I gave to the question in that case. I hope, therefore, that this report of the committee will be adopted. The argument that the register of wills in a particular county or in the counties of the state require the spur of additional compensation, does not appeal to me. A man who is sworn to perform his duty ought to perform it whether he is paid in salary or in fees. The collection of the collateral inheritance tax is, in the first instance, imposed upon the Auditor General. He used to be paid fees, but I think since he has been paid a salary he is even more active in the collection of inheritance tax. He supervises the work of the register of wills in each county. He not only sees that the register of wills performs his duty, but he has a young lawyer who looks after it. He has gone over the records in many estates where the tax for one reason or another, has not been paid; and no doubt the report of the Auditor General will show that large sums have been collected in the very recent past. I hope, therefore, that the report will prevail.

The CHAIRMAN. The Chair wishes to be understood as believing the fee system an anachronism in government as it exists today; but my thought, on the second reading of this amendment, leads me to believe that under it a provision can be worked out by which the state will compensate the county officers performing services for the state.

Mr. FISHER. Mr. Chairman: I offered the motion for the purpose of developing the sentiment of the Commission, and particularly the reasons which inspired the committee to report it out, rather than because I believed in the fee system. The fact is I am a supporter of the abolition of the fee system, and therefore I ask to withdraw the motion.

Mr. CARSON. Mr. Chairman: I withdraw my second.

The CHAIRMAN. The amendment by the gentleman from Indiana is withdrawn.

Mr. ENGLISH. Mr. Chairman: We now come, as I understand it, to the consideration of the report of the committee. May I call the attention to what might later on, if this section should be adopted,

and find its way into the Constitution, of something in the nature of a difficulty in construction. The language in the report is, "All county officers shall be paid by salary only for services performed for the county, state or any political subdivision of either." As I understand it, any county officer, and I have particularly in mind the recorder of deeds and register of wills, performs two distinct types of service. There are statutes which, for instance, require that the register of wills and the recorder of deeds keep records of mortgages for the use and benefit of the county commissioners, in order that the county commissioners in collecting the taxes on money at interest may have a very definite record of money that is at interest as shown by the mortgage record in the office of the recorder of deeds. That, I take it, is a service performed for the county. The recorder of deeds is paid for that service out of the county treasury, if I understand the practice correctly. In the same way, the same official performs certain services for the municipality. Let us say that they are of the third class that happen to be within his jurisdiction; and undoubtedly there are distinct services to be performed for the commonwealth itself. But the principal source of revenue of that particular office comes, it seems to me, from the services performed for the individuals who take advantage of the machinery provided by the state for the recording of their instruments of title. The question that I have in mind is simply this: Is the language of the section broad enough to comprehend the services performed for the individuals who have occasion to avail themselves of the facilities of the office of the recorder of deeds? Are the services performed by the recorder for such individual services performed for the county? It seems to me that they are not, and that in order to express the true meaning of the section the words "only for services performed for the county, state or political subdivisions or either," should be stricken out, and something like this substituted: "For the discharge of their legal duties," so that the section would read "All county officers shall be paid by salary for the discharge of their legal duties, and all laws providing any other form of compensation for such services are hereby declared to be repealed." I am heartily in sympathy with the general proposition.

Mr. CARSON. Mr. Chairman: How are they to be paid? By warrant on the state treasury or by draft on the county treasurer?

Mr. ENGLISH. Mr. Chairman: In answer to the question of the gentleman from Philadelphia, it seems to me that this is a matter that might be appropriately taken care of by general legislation, in view of this other section of the Constitution, or the section which might very well be adopted, or by the provision of the general law, which undoubtedly would be adopted requiring that their fees be paid into the county treasury. In the case of county officers for services that are rendered to the people of a particular community, for instance, the register of wills for Erie county receives fees for recording instruments of the character as now provided. It will be perfectly right and proper and entirely logical that these fees should be paid into the county treasury and that he be paid his salary out of the treasury of Erie county. It seems to me this is a matter that could easily be taken care of by general legislation. I hope that this Commission will do something to abolish the fee system so far as county and municipal officers generally are concerned. I do not care

to admit that the county from which I come is one of the smaller counties of the state, because we are rapidly approaching the one hundred and fifty thousand mark; but up to the present time we have seen a great deal of the practical workings of the fee system. There are officers in our county and in other counties in our neighborhood who receive more for the performance of purely ministerial functions that are ordinarily taken care of by stenographers and deputies than is paid to the Governor of Pennsylvania or to the judges of any of our courts. It seems to me, however, there need be no practical difficulties to the working out of a just and equitable salary system. The salaries are paid to our judges in the counties, our county commissioners are paid salaries, and all of our county officers generally with the exception of four or five conspicuous exceptions where the officials receive compensation by way of fees that are greatly out of proportion, either to the value of the services rendered or to the quality of intelligence that is required to render the service. It seems to me, therefore, if I am right in my criticism of the language of the section, that it ought to be amended so as to put beyond question the proposition that fees received by county officials shall not be considered a part of their compensation in addition to their salaries, and with that exception probably the section should certainly be adopted.

Mr. GORDON. Mr. Chairman: I suggest to the Committee that we add after the word "either" after the third line, the words "or any other official service."

The CHAIRMAN. May the Chair offer a suggestion? Mr. English is correct. In the country districts the question is whether or not the officers serving under the provision, as it is written, would have to be paid salaries by the cities or municipalities in which the services were rendered. We are talking about the compensation of county officers, and it seems to me that out of the situation, as it now exists, the provision as it now is, is a clear expression of the intent which is desired to be worked out. "The compensation of county officers shall be regulated by law," section 5 of article XIV, page 60 of the Compilation, "and all county officers who are or may be salaried shall pay all fees which they may be authorized to receive into the treasury of the county or state, as may be directed by law." What we are speaking of is the compensation of county officers.

Mr. FOX. Mr. Chairman: I am afraid that will not cover the difficulty. I think we ought to have some language as we have here, that is to include the services performed for the county, state or any political subdivision.

The CHAIRMAN. May the Chair suggest something at this time? The hour of recess has arrived, and by the time we reconvene somebody will doubtless have thought out a proposition, just exactly what we need to express the idea.

Mr. ENGLISH. Mr. Chairman: May I offer this amendment in place of the suggestion I have just made? That the section be amended so as to read as follows: "All county officers shall be paid only by salary for services performed for the county, state or any political subdivision of either, or for any other official service; and all laws providing any other form of compensation are hereby declared to be repealed."

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. CARSON. Mr. Chairman: Is it not unusual to repeal acts of assembly by constitutional provision? Do you really mean the word "repeal" there?

Mr. GORDON. Mr. Chairman: You will find other instances.

Mr. CARSON. Mr. Chairman: It does seem novel to me to repeal acts of assembly by constitutional provision.

RECESS.

Mr. FISHER. Mr. Chairman: I move that the Committee do now take a recess until 2.30 o'clock P. M.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1.05 o'clock P. M., the Committee of the Whole took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The Committee of the Whole reconvened at 2.30 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. We will resume consideration of the amendment to the report of the committee on section 5 of article XIV.

On the question recurring,

Will the Committee agree to the amendment?

Mr. ENGLISH. Mr. Chairman: With the consent of the gentleman who seconded the amendment, I would ask leave to withdraw it.

Mr. GORDON. Mr. Chairman: I withdraw my second.

The CHAIRMAN. The amendment is withdrawn.

ARTICLE XIV, SECTION 5.

Mr. ENGLISH. Mr. Chairman: I now move that the report of the committee be amended by substituting for the report the following:

"The compensation of county officers shall be regulated by law and all fees which county officers may be authorized to receive shall be paid into the treasury of the county or state as may be directed by law. All county officers shall be paid only by salary for services performed for the county, state or any political subdivision of either, or for any other official service; and all laws providing any other form of compensation are declared to be repealed."

Mr. FOX. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. THORPE. Mr. Chairman: The word "repeal" which occurs in the amendment and also occurs in the original is objectionable to put into an organic law, and I submit that a better word be selected than that.

Mr. ENGLISH. Mr. Chairman: Of course, I merely adopted the language of the committee in suggesting this amendment, and if the gentleman can add to his criticism an apt word I will be very glad to adopt it in this amendment.

Mr. THORPE. Mr. Chairman: I would ask for information. Would not the repeal be effective by the organic act itself without mentioning the word "repeal?"

The CHAIRMAN. It would seem so to the Chair.

Mr. REED. Mr. Chairman: In the Constitution of 1874 we find the word used is "avoided," "such acts now existing are avoided." I do not think that word any better.

Mr. ENGLISH. Mr. Chairman: I understand that when we get all through there will be a committee very well qualified, no doubt, on account of their literary and legal achievements, to suggest legal and literary criticisms for all of the language used in all of the sections. We are merely seeking to express the substance of the thought that ought to be incorporated into the Constitution in connection with the various sections. So that it seems to me that having in mind what we are about at the present moment it does not make any difference whether we use the word "repeal" or any other word that expresses the same thought.

The CHAIRMAN. This matter, it seems to the Chair, could be taken care of by the committee on style when it is created. If any gentleman has a more apt word than "repeal" that occurs to him, he may offer the suggestion at any time.

On the question recurring,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

RECONSIDERATION OF VOTE ON SECTION 15 OF ARTICLE III.

Mr. FOX, Mr. Chairman: I move than the vote by which the report of Committee No. 1 on section 15 of article III was adopted be reconsidered.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the Committee adopt the report?

BUDGET.

Mr. FOX. Mr. Chairman: May I be indulged to suggest an amendment somewhat along the line of that I suggested this morning with respect to section 15 of article III, the budget section? I move that the section approved this morning be amended as follows: "The final adjournment of the general assembly shall not take place until a period of ten days shall have elapsed after the appropriation bill shall have been finally acted upon by both Houses of the general assembly and shall have been presented to the Governor."

Mr. ALTER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

The CHAIRMAN. May the Chair ask for information as to whether that would compel the Governor to act on appropriation bills within ten days?

Mr. FOX. Mr. Chairman: No, I think not. The thought that I had in mind was this: The appropriation bill would be sent to the Governor during the session of the legislature and he has ten days

to consider it. This would give him a period of ten days in which to consider the appropriation bill. Of course, the thirty days that he has to consider after the adjournment of the legislature is a different proposition.

The CHAIRMAN. May I suggest for information that my experience with the consideration of the appropriation measures of the last session of the legislature led me to the conclusion that the Governor cannot consider them in ten days, if they were to be put to him in bulk?

Mr. McCORMICK. Mr. Chairman: May I suggest that it is only in the event of the budget system being adopted, in which event the Governor would be much more familiar with the appropriations than he has been under the old system?

The CHAIRMAN. I think the gentleman's thought is well stated, because if the budget is presented to the Governor prior to the adjournment of the legislature, he must sign or veto it within ten days.

Mr. FOX. Mr. Chairman: The other portions of this section provide that the appropriation bills shall have been finally acted upon by both Houses of the general assembly. So I take it that would in effect give the Governor ten days in which he can consider, and then if he has any objection, they shall go back to the legislature, and the responsibility rests with the legislature rather than with the Governor.

The CHAIRMAN. May I ask another question for information? Does that apply just to the budget or to other appropriation bills?

Mr. FOX. Mr. Chairman: Just to the budget. It is an amendment to this section.

Mr. FISHER. Mr. Chairman: I am still not quite clear, perhaps I am somewhat slow of comprehension, that the wording as submitted by Judge Fox does not include other appropriation bills. It seems to me that it is not limited to the budget bill.

Mr. FOX. Mr. Chairman: That is the purpose I have in mind. The preceding part section is: "The general assembly shall have power to increase, decrease, strike out or otherwise alter any item in the appropriation bill, or add new items thereto. Until the appropriation bill shall have been finally acted upon by both Houses of the general assembly, neither House shall consider any appropriation measures, unless the same shall be solely for the immediate needs of the general assembly, or shall have been submitted to the general assembly by the Governor with the request that it be acted upon in advance of the appropriation bill." "The final adjournment of the general assembly shall not take place until a period of ten days shall have elapsed after the appropriation bill"—I am using the exact language—"shall have been finally acted upon by both Houses of the general assembly and shall have been presented to the Governor."

On the question recurring,

Will the Committee agree to the amendment?

It was agreed to.

On the question recurring,

Will the Committee adopt the report as amended?

Mr. McCORMICK. Mr. Chairman: May I offer a further amendment, to insert at the end of the section preceding the one just adopted, the end of the clause as reported by the committee, the

following: "nor shall the general assembly after the introduction of the appropriation bill and until its final passage, pass finally any other measure unless by a two-thirds vote of the House such measure is declared to be an emergency measure." The object of that is to attempt to correct the system which has existed in the past of holding the appropriation bill until the end of the session, and which could be used as a whip over other legislation.

Mr. PINCHOT. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

The CHAIRMAN. Is the gentleman from Dauphin speaking about the general appropriation bill or the budget bill?

Mr. McCORMICK. Mr. Chairman: Only the budget bill, the bill presented by the Governor, that that should be considered and pushed to a conclusion by the legislature.

The CHAIRMAN. Before any other measure?

Mr. McCORMICK. Before any other legislation is passed, unless it is an emergency measure, and then by a vote of two-thirds of the members of the legislature such a measure can be passed prior to the passage of the general budget appropriation bill.

The CHAIRMAN. The experience of the Chair with the last general appropriation bill, and I take it that it may be so with the budget bill, was that after its introduction there were a number of matters that arose that had to be incorporated in it, but it had to be held in abeyance in the legislature until those matters could be gotten in. I am just suggesting to the gentleman whether all legislation ought to be held up in the light of Judge Fox's amendment, which would require that the budget bill should be disposed of by the Governor, and that the legislature should be in session to hear his approval or disapproval; that is what I understand to be the effect of Judge Fox's amendment. That is, that the budget bill would go back to the legislature either approved or disapproved while the legislature was still in session.

Mr. McCORMICK. Mr. Chairman: The trend of Judge Fox's amendment is that when the Governor gets the appropriation bill he sees that it so far exceeds the revenue, which has been the case in every session for a number of years, and he sends it back to the legislature and says, "Keep within your revenues," instead of taking that responsibility, himself, and I therefore voted for Judge Fox's amendment on that ground. There still exists a very serious situation whereby we hold all the appropriations to all the various institutions until the last day of the session, so that no member of the House or Senate has any knowledge as to whether or not his bill is through; there is very little independence of thought or action under these conditions. It is to obviate that fear on the part of a legislator that I make this amendment.

The CHAIRMAN. The Chair had some experience in the last session of the legislature. It is not alone concerning the appropriation bill that there is danger in the last part of the session. The calendar gets so cluttered with general legislation that there is no opportunity to consider or debate on anything.

It is some sort of an endless chain of getting measures through. I think Mr. McCormick might give some thought to the proposition as to whether such an amendment would not tie up the calendar and

make the whole mass of legislation swing into the legislature in the last few days, which is very bad legislative practice. I cannot fully grasp what Mr. McCormick has in mind.

Mr. McCORMICK. Mr. Chairman: As a practical matter, I think that that statement would show the need of getting the general appropriation bill out of the way. I think that is true as you stated it. There is a tremendous confusion, a great trading, a great pulling here and there and log-rolling, there is tremendous confusion; and there is no businesslike or systematic discussion of this budget bill. All I want to do is to get it out of the way in a business-like manner in the first part of the session. No one is satisfied. In this way we get the budget or appropriation bill before the legislature early in the session and the people back home know exactly what they are going to get.

Mr. FISHER. Mr. Chairman: May I ask Mr. McCormick just what he considers an emergency measure? I would like to be enlightened and know just exactly what it means.

Mr. McCORMICK. Mr. Chairman: I can think of the Johnstown flood, I can think of a possible invasion, a call to arms, and questions of that character that demand an appropriation; a great state necessity, a great public necessity; but I cannot so regard a bridge across some river or some appropriation of that kind. I would not call that a measure; if there is a better word, I am not particular about the word, I accept any amendment of that kind; but it is the principle I want to have adopted. I think it is quite worth while. I think it is giving a clearer expression to the people of the commonwealth if such a thing can be accomplished.

Mr. GORDON. Mr. Chairman: There are practical legislators here who can speak more accurately than I on this subject, but I cannot see the utility or any advantage whatever in the amendment proposed by the gentleman from Dauphin. The appropriations made by the legislature are for two years and cover the period the legislature is not in session. There is no exigency or emergency requiring expedition in the passing of the appropriation bill, no special emergency. If I gather the thought of the gentleman from Dauphin, it is that other legislation might be used to trade with in the passage of the items of the appropriation bill, and therefore would hamstring the legislature on all legislation until they had adopted the general appropriation bill. That is tutelage, which I do not think is desirable, and I do not think would accomplish any good purpose. The expenditure of money, millions of dollars, that would be involved in the appropriation bill, touches the general finances of the state, both in its receipts as well as its expenditures. This appropriation bill has usually been retained until the end of the session, not from any intention to embarrass the Governor, but perforce in order that there may be a comprehensive knowledge of the receipts during the coming two fiscal years, and the appropriations that can be made within those receipts. I can see much harm that would come from a too rapid or a too expeditious passage of the appropriation bill. All of the departments must have made their reports, they must have been submitted to the Governor and to the legislature before the consideration, the intelligent consideration of the appropriation bill. I do not know of any reason why a law amending the intestate laws of the commonwealth or any other law touching on any of the various

subjects which might be brought under the legislative purview could not go on and be passed and the legislative appropriation bill wait until it comes for final disposition. It must be disposed of ten days before the final adjournment. If the Governor does not approve and sends it back to the legislature, they can correct their errors and amend the bill. I am inclined to think that the amendment of the gentleman from Dauphin will be destructive and in no sense beneficial. I submit it to the practiced legislator sitting on my right, not the gentleman from Pike, but the gentleman from Allegheny.

The CHAIRMAN. For information, the Chair would state that frequently there was in the last session of the legislature the creation of offices which had to be taken care of in the appropriation bill. It occurs to the Chair that the whole system of collecting the collateral and direct inheritance taxes was changed, and that the bill was not passed until late in the session, and the means of putting them into execution by carrying them in the appropriation bill had to be put into the appropriation bill after the passage of that act, so that it may be essential that the appropriation bill shall be held until it is seen what the legislature in session at the time is going to do in the way of expenditures and further develop the revenues of the state.

Mr. ALTER. Mr. Chairman: The preparation of the general appropriation bill including these subjects which are now included in a general appropriation bill is a very considerable task, and if it should be provided that in addition to the matters now taken care of in that bill, other subjects contemplated should also be included in it, the task, of course, would become still greater. There are great practical difficulties, it seems to me, in the way of pushing such a general appropriation bill through the legislature in advance of the entire body of legislation to be covered by the session outside of the matter of the general appropriation bill. It has been suggested that new offices are created at every session of the legislature. New departments are created from time to time, and the proper provisions for the expenses of such new offices, or new departments, or new activities of any kind, have to be taken care of in the general appropriation bill, the completion of which must necessarily await the determination of the legislature, as to what, if any, new activities are to be undertaken by the state, and new departments, or new offices created. In my experience, Mr. Chairman, I have not observed any serious invasion of the right of private judgment upon the part of members of the legislature growing out of their participation or the participation of their districts in the appropriations. I can recollect of no case where it ever came to my knowledge that the appropriation sought by any member for institutions in his district were impaired by reason of his being unable conscientiously to support some item of legislation, nor of any case where it ever came to my attention, or any rumor ever came to my attention, of appropriations sought by any particular member being increased as the price of that members support of any item of legislation. I think the apprehension on that score is not justified by experience in so far as I have been able to observe the operations of the legislature. I know of no case, as I stated, where appropriations sought by a member have been jeopardized by that member's conscientious action, whether favorable or unfavorable to the desires of those in control of legis-

lation. If a member of the legislature gets into the habit of lecturing his colleagues, or assumes superior virtue, he must take the consequence, and perhaps cases of that kind are sometimes attributed to the machinations of the supposed overruling powers. I think the reasons why members become unable to get anything done are usually attributable to the make-up of the member, and not to the system under which the legislature is operated.

Mr. FISHER. Mr. Chairman: Just one feature occurs to me as a practical result of this amendment, is that the effect will be to estop any legislative action during the pendency of the budget bill. Is that not so? The budget bill must pass by a two-thirds majority, the same as any other appropriation bill. Suppose a minority greater than one-third existed in the legislature and wanted to obstruct all legislation. What would it do? Why simply obstruct the budget bill, and everything else would be held up. The whole course of legislation is stopped right there. It seems to me from this practical effect, we ought to go very slow in adopting this amendment.

Mr. STACKPOLE. Mr. Chairman: I was just going to suggest that Mr. Fisher has stated a very vital objection to this proposition. I can see how the Governor, out of touch with the legislature, controlling a minority such as he has suggested, would practically tie up legislation indefinitely, and would produce a situation that would be much more lamentable and much more scandalous than any possible conception of the present system.

Mr. TYSON. Mr. Chairman: It seems to me that the desirable results aimed at by Mr. McCormick's amendment would be accomplished without the possible undesirable features of the amendment as it stands, which I understand provides that no appropriation bill may be considered until this budget bill is out of the way.

Mr. McCORMICK. Mr. Chairman: I just want to say that this amendment was made upon the budget clause of the amendment to the Constitution. We are adopting something entirely new; it is something that never before existed. We never had presented to the legislature a comprehensive businesslike statement of the state's needs. The Governor under this amendment could send that budget; it is the administration budget of the state, and while it is possible that questions might come up after that, he, under this act, is required to study out the needs for two years and to submit them to the legislature after consultation with the heads of the departments, and it is upon that routine of administrative work that he makes his estimates. It seems to me that the first thing to do is to get the business of the state out of the way. It is for that reason that I do not think it will be particularly complicated. I do not think the budget should be made subject to extraneous or outside matters. I think the budget should confine itself to administrative appropriations, and it seems to me those things could be adopted within a very short period of time after the Governor has made his preliminary study with the heads of the departments and the budget properly submitted. It is only for that reason under the present system that these objections that have been raised may be pertinent, as new bills come in up to the very last day of the introduction of the appropriation bills.

On the question recurring,
Will the Committee agree to the amendment?
It was not agreed to.
On the question recurring,
Will the Committee adopt the report as amended?
It was adopted.

ARTICLE III, SECTION 17.

The CHAIRMAN. The next section in order for consideration is section 17 of article III of the Constitution, the supplemental report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 17. Appropriations for charitable, educational or benevolent purposes may be made to a corporation or association not under the control of the commonwealth, but engaged in work or service deemed by the general assembly to be for the public good; provided, that such work or service conforms to such standards of excellence as may be prescribed by general law or by an executive agency established by general law; and provided further, that the benefits of such work or service are in no way dependent upon religious belief or denominational connection; and provided further, that every such appropriation shall be made by a vote of two-thirds of the members elected to each House. No such appropriation shall be made to any person or community; but this prohibition shall not affect appropriations for pensions or rewards for military service or for the retirement of judges or of employes of the state, or a state institution or of the public school system.

On the question,
Will the Committee adopt the report?

APPROPRIATIONS TO CHARITABLE AND EDUCATIONAL INSTITUTIONS.

Mr. GORDON. Mr. Chairman: I should like to hear from the chairman of that committee as to just what are the changes made in this report.

Mr. ALTER. Mr. Chairman: As chairman of Committee No. 1, from which this report comes, it had referred to it the sections presented to the Committee of the Whole by the gentleman from Philadelphia, Mr. Pepper, and this is the section the committee reported back without any recommendation, in order that the section as it came from Mr. Pepper might be considered by the Committee of the Whole. There is nothing, therefore, that the committee can add to the section as it stands.

Mr. GORDON. Mr. Chairman: I am opposed to the report of the committee on this section as it stands in its entirety. This subject is full of very combustible material, and I am not at all surprised that it came back from the committee and was presented to the body without comment; but I think that would be a trite and unworthy treatment of so great a subject. The report proposes to take the place of two sections of the present fundamental law. I will read them on page twenty-five of the Compilation.

"No appropriation shall be made to any charitable or educational institution not under the absolute control of the commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the state, except by a vote of two-thirds of all of the members elected to each House."

The effect of that provision is that appropriations may be made for charitable and educational purposes to institutions not under the

absolute control of the commonwealth, but two-thirds of the members of each House must vote for such appropriation.

"Section 18. No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association."

The effect of that paragraph is to strike out of the general class of institutions not under the absolute control of the state, denominational and sectarian institutions, and forbidding absolutely appropriations to such institutions. The effect of the amendment proposed by the committee whose report we have under consideration is to absolutely destroy the last section which I have read, that which forbids the appropriation to denominational or sectarian institutions. If this report should be passed, that prohibition would disappear from the fundamental law of the commonwealth. I will read the report of the committee that it may be seen that this is a fact.

"Appropriations for charitable, educational or benevolent purposes may be made to a corporation or association not under the control of the commonwealth, but engaged in work or service deemed by the general assembly to be for the public good; provided, that such work or service conforms to such standards of excellence as may be prescribed by general law or by an executive agency established by general law; and provided further, that the benefits of such work or service are in no way dependent upon religious belief or denominational connection; and provided further, that every such appropriation shall be made by a vote of two-thirds of the members elected to each House."

On the subject that I am now discussing, that is the whole of this amendment, and that amendment, therefore, permits appropriations to denominational or sectarian institutions, but contains the very curious clause that it may be done provided the benefits of such work or service are in no way dependent upon religious belief or denominational connection. Let me make a little passing textual criticism on that for the benefit of the gentleman who is its author. It provides "that the benefits of such work or services are in no way dependent upon religious belief." How could the benefit of the service be dependent upon religious belief? If you prick a Jew, will he not bleed? If you tickle a Baptist, will he not laugh? A blister on the neck of a Presbyterian would be just as effective as though it were applied to a mere Anglican. But the author of this article, intending to escape facing directly the question of appropriations to denominational institutions, allows the appropriation to any institution if the benefit of the service does not depend upon religious belief. I say again, how can the benefits of the service depend upon religious belief? The service will be just as effective to an Anglican as it would be on the most credulous of sectarians. I presume, however, that that is not what the author of this amendment meant, but whatever he meant, it is hung in midair. Now, I too deplore, deeply deplore, any amendment to the fundamental law which would take out of it an emphatic and unequivocal denial of the right of the legislature to make any appropriations for educational or charitable purposes to any denominational or sectarian institution. The purpose aimed at by those who drafted this Constitution is perfectly well known, and it is perfectly well known to every member of

this Commission. It was an abuse so great in other countries and in other times that the progress of liberty has been marred by legislation, statutory and fundamental, intended to prevent the effect of just such legislation as this; in other words, the fundamental law which we have inserted in the Bill of Rights is that there shall be no establishment of religion. The provision for freedom of religion carries with it also a prohibition of legislative or state aid to religious institutions of all kinds. And those who wrote the present Constitution, when they forbade absolutely any appropriation to denominational or sectarian institutions, meant to announce that fundamental principle. Because, if there is to be a severance between the state and the various forms of religion, that severance must not only take the form of giving absolute freedom of worship to all men according to their conscience, but it must take the form of an absolute denial of state aid to any religion or any religious institution; because a religion, or a religious institution, which receives the benefits of the tax of the people is *pro tanto* established, is *pro tanto* fathered by the state, is *pro tanto* being helped by the moneys of all the people.

Mr. Chairman, under the old system which is now so well and so finally dead, under the old system, the king, the prince, appointed almoners for his charity. Usually the lord high almoner of the crown was a bishop. That was in the days when state and church were one. All that is past, past in the most advanced states, and past I hope and believe forever. A democratic state needs no almoner. It makes its appropriations for education and for charity directly to its own institutions; it does or it ought. It does in all recent and new states, and it does to a large extent in the old states. The only limitation, gentlemen, which would admit of any different rule is that which requires a two-thirds vote for appropriations to institutions, educational or charitable, not under state control. But there alone is the line of demarcation beyond which the legislature may not go. Now, I repeat, the prohibition against the appropriations to denominational and sectarian institutions is absolutely repealed and destroyed by the report now under consideration, and an appropriation may be made by a two-thirds vote to any educational institution, to any charitable institution, no matter what may be the denominational or sectarian nature of it, if the benefits of the service do not depend upon the religion of the person who receives the benefit. I pointed out that that was an impossible, incongruous and absurd limitation, and probably was not intended as it reads. But what a vast door that would open! Who would be the person to determine that the benefits of the service rendered depended upon the religious faith of him who received it? Let me cite that very important charitable institution in Philadelphia, the Presbyterian Hospital. I mention that institution because it is under the guardianship of the religious body with which I am traditionally connected. The services and the benefits which that institution renders depends in no respect upon the religious belief of the person who receives the benefit. Certainly not. Now, I am obliged to say that that institution is just as denominational as it would be possible for a charity to be which was not non-denominational. It has its origin in a charitable disposition of the members of the Presbyterian denomination. The collections for its maintenance are taken up

at stated times in the churches. The body controlling it is made up, I am sure, entirely of persons of that communion; and while its doors are open to all, and while I believe there is nothing in its performance of duty which would indicate a religious persuasion of those who control its charities, nevertheless, it is a Presbyterian charity. Go out to the western end of the state, and we have the Mercy Hospital, which I remember very well, because when I had the honor to be in the Senate it was then a strong and powerful charitable institution. It is under Catholic guidance and control. I do not know much about the personnel of its body. We know how it is controlled, but it is to all intents and purposes a Catholic charity. Of course its doors are not closed to any person who knocks at them for the kind of service which such a charity gives. I might go over all the list of those charities which are under the list of particular patronage of particular churches, or that might be much more than they are under religious, denominational and sectarian control if this amendment should be passed as the organic law, because then the only thing to be considered would be the religion of the person who receives the benefit. Do they in any way receive the benefits the less or receive them the more because of their religious belief?

What I have said will apply still more strongly to educational institutions. This amendment allows appropriations to educational institutions that are under sectarian or denominational control, if the benefits of such education are not affected by the religion of the person who receives the benefit. That is the language of this report. I do not know whether it was intended, I cannot believe that it was, but at least that is what the words say; and that I might not be thought to misrepresent it let me read it again:

“Appropriations for charitable, educational or benevolent purposes may be made to a corporation or association not under the control of the commonwealth, but engaged in work or service deemed by the general assembly to be for the public good; provided, that such work or service conforms to such standards of excellence as may be prescribed by general law or by an executive agency established by general law; and provided further, that the benefits of such work or service are in no way dependent upon religious belief or denominational connection.”

Mr. Chairman, I do not think there is a religious body in the commonwealth maintaining an educational institution which would not be willing to accept an appropriation of public money with the distinct understanding that it would admit any student who applied to receive the educational advantages of the institution. Why, of course, it would. I may be repeating myself. The benefits of the education cannot be dependent upon the religious belief of him who receives the education. But there is another subject which must be considered in determining this, and that is, what shall we do about such institutions, whether they are under religious patronage or whether they are under any other patronage? Shall we continue our present method of giving millions of dollars every year to private persons engaged in charity through private organizations and institutions? That this is an evil, I mean that it is a financial evil, that it is an abuse, in that the money is not appropriated scientifically or wisely, or economically, or upon any system. I remember very well when I was in this legislative body years ago, that there then occurred

what I am told still occurs. The member or senator, as the case might be, from a region where there was a hospital or an educational institution that wanted state aid was solicited by his constituents to present the bill making the appropriation, that was always for a sum in excess of what it was expected that the legislature would give. Those institutions represented a great many well-meaning people, a great many good people, a great many religious people, a great many philanthropic people who found a vent for their religion or philanthropy or general good intentions in the foundation of an organization for the dispensation of some sort of charity which engages their attention. It gives them a certain amount of conspicuity; it also gives them a certain amount of status in the community; it also gives them a certain amount of general character as people who go about doing good. The sweet name of charity, when it is connected with a man or woman, of course, gives him or her an odor which sometimes years and years of very simple, plain righteous living would not give. But, Mr. Chairman, they attain by and by into the attitude of a class, and they have their beds, they have their darling employments, they have their particular line of good and well doing. Well now, that would be all very well if it stopped there. But they come to the public treasury and ask to be helped for the kind of good that they do. They present to their senator or member a list of the number of accident cases which were taken in, how many were cured, the number of those sick, and cases that were taken in, relief that was granted; and generally the good work of that institution is exploited for the benefit of an appropriation from the state. All those things must come into the legislature, and here sit the members with their constituents behind them, in each instance desiring a large appropriation of the public money for the conduct of public charity or public education according to the will or desires or prejudices of private citizens. And what is the result? Why, we all know. These bills carrying millions are passed by a system of comradeship among members of the legislature, in which each votes for the appropriations of the other in order that he may get his own appropriation. That is the only way, as a general proposition, that the smaller charities get anything. They get their appropriation, because the member who seeks it for his constituency has a vote which he can cast for or against the other appropriations if he does not get his own. He has a stimulus in this case which is not on the side of economy, and is not on the side of the public good. That stimulus is to befriend, to serve a very important element of his constituency, and that is the important people, the prominent, good, religious, charitable people, well known in the community, who carry on these particular corporate works. Imagine a member from a legislative district, resisting those appeals and saying to those constituents, "I will not present the bills; you have originated this charity, it is true, in your denomination, and it is a very good one, and you have spent whatever may be the number of thousands of dollars, and that is very good; you have your superintendent, a very good one, and his assistants; you have your matron and her assistants; you have your body of nurses, and they are all very good people; and you might be doing a very good work; and you spend a great deal of money, and your salary list is very considerable; but that is no reason why the state should give you money to enlarge your domain

of activity; that is no reason why the state should give you money to spend as almoner of the commonwealth; that is no reason why the taxes of the people should be taken and given to you to use and distribute as an agency for expenditure from the public purse. I will not present your bill, madam. I do not think you ought to have started this institution. There is another one three squares away. It is true, it is conducted by another church, and it is true that it is mainly supported by that other church; but it has its medical staff, its administrative staff, and if you two would join together and unite, you would make a stronger institution and the money would be spent more advantageously and economically. There is a little institution back on this other street, just started last year by a few people who do not belong to any church, and they too are very good people, and if you took them in and united, and if you would all get together, then I believe I would be able to go before the legislature and ask for a reasonable allowance to help you." That member would be retired from the legislature at the next session. The godly would vote against him in overwhelming numbers at the polls.

This system has grown up largely because the institutions of charity originated in this state without any connection with the church, and the educational institutions originated with no connection with the church. When this commonwealth was founded that was still the case, and hence no extensive system of charities was adopted by the commonwealth in which the administration would be under state control. Fortunately education was taken up in those days, and this state was one of the earliest to adopt a system of public education, and is leading in the education of the youth of the land under public control today. That is not so as to public charities; it ought to be so. And once again, let me say this, and I want to speak with great plainness. I think we all ought to in a body like this, where these very profitable offices that we hold are not dependent upon the votes of our constituents in the future. A religious denomination does not merely consist of its house of worship; does not merely consist of its ministers, or of its pulpits from which its doctrines are preached, of its altars where its priests minister, of its Sunday schools where its youth are taught the principles of religion and morality. A religious denomination consists of more than this. It consists of all its activities, its denominational activities, its educational activities, its sociological activities, and especially its benevolent activities. There is a race among the denominations of all kinds to outstrip each other in the evidences of the good they do through their charitable organizations. Why is this? It is not only because of the good disposition of the particular person, but it is because of the public impression it is supposed will be made by exhibiting the wide extent of the benevolent and educational work done by a particular institution. Well, now, that is to be encouraged, but it ought to be done with private money and not with public money. One cannot tell all the things which will occur of a radical character to change the complexion of the earth and its institutions, political and social, in the future as the result of the war we have gone through; but if the thoughts of those who have studied the subject profoundly are to be given weight, it is believed that the churches of the future will be less and less denominational and will be more and more sociological. If you read the magazines of the country, the religious journals, or

those which give themselves over to philosophy and economy and economic thought, you will find that the adjuration to the clergy and the adjuration to the laymen everywhere is that the churches hereafter shall be more active in social matters. They have been too cold. Their doors have been closed except on Sunday, and their church buildings have only been used for ceremonies of worship. It is said the church must come down to the people, must mingle among them, it or some of its appliances must be their gymnasium, must be their place of education, must be their place of debate on public matters, must interest itself in all the questions which tend for the well-being of the race physically, intellectually, morally and spiritually. If that is to be so in the future, and personally I do not doubt that it will be so, I believe that the churches of the future will be more important institutions, because they will be more intimately concerned with the personal well-being of their members. If that is so, cannot we see the demand for the appropriations to institutions under church patronage increased year by year, and day by day? It is time to arrest this matter. What answer can be made? Surely, the good people behind these charities cannot say, "If we do not get state aid we will stop." That would be unchristian, that would be sectarian; and we cannot accuse them of being that. What must be their answer if we stop giving at some time in the future this aid from public money for private charities and the private educational institutions? Why, only one answer; that is, that the churches must be compelled to support their institutions, both charitable and educational. Let them have drives for charity and drives for education, as we had drives during the time of the war for all sorts of loans and all sorts of charities. Let them vie with each other in that respect; and instead of sending lawyers up to the general assembly to lobby through bills, taking public money for private charities and educational institutions, let them rival each other in the abundance with which they will give, knowing that there is a reward hereafter.

Now, what I am saying I am sure must be in the minds, must be in the hearts of many who hear me. I am uttering nothing novel, and nothing, I think, in even a novel way. It is what is discussed in every hamlet of the state. Every public candidate and every public man knows it, and every public man has discussed it. What is the remedy? Surely, not this which has been handed out by this committee, which is puny and feeble, and I think fictitious and misleading. The remedy should be that the state should cease making appropriations to any institution not under state control. Now, since it has done it so long, I can see that to stop at once would work harm, work harm because there could not be a prompt readjustment to the new conditions by these institutions, and I would not for charity's sake have any suffering one taken from the bed whereupon he or she rests; but let this Constitution give notice to the philanthropic that at a certain date in the future they will have to finance their own charities from their own pockets, their individual pockets, their corporate pockets, their church pockets, and after that the state will be its own almoner, spend its own money for education and for charity, and control its expenditures and control the institutions of that character which get state money. If this should in any degree meet with the approval of the members of this body, I will offer as an

amendment to the committee's report the following to take the place of the seventeenth section of this article:

"On and after the year one thousand nine hundred and twenty-seven, no appropriation shall be made to any charitable or educational institution not under the absolute control of the commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the state. Until said year one thousand nine hundred and twenty-seven, all appropriations to such institutions at any session of the legislature shall be made by a single bill and for the gross sum of such appropriation for such sessions, and the same shall be appropriated and disbursed by the Governor to such institutions and in such sums as he shall determine. Said disbursement and appropriation may be made by the Governor through such board or executive agencies as now exist or may be hereafter created by law, for the supervision, control and regulation of the charitable and educational institutions of the commonwealth."

I would then leave section eighteen as it stands.

"No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community nor to any denominational or sectarian institution, corporation or association."

One of the technical advantages of the amendment which I present is this—and I want to say that I have consulted and talked with my colleague from Philadelphia, Mr. Pepper, on one branch of this matter. The legislature would have to determine until one thousand nine hundred and twenty-seven just how much money the state will give to institutions not controlled by the state. Having determined upon that course, not to vote to any particular institution, but vote to it in the gross for the purpose of educational and charitable institutions not under state control, what would be the effect of that? Why, it would save the struggle between institutions lest one would get more than the other. It would save the incongruous action of the legislature parceling out as between the institutions what each should have, and determining what are the respective merits of each; but it would do what the legislature is fit and competent to do, to say how much in the gross should be appropriated for that purpose, and then the Governor should determine through the Board of Public Charities or such executive agencies as may be created by law to what institutions this gross sum should be appropriated, and in what amount, and in what time. This would last until the year one thousand nine hundred and twenty-seven. I fixed that term because the legislature meets in odd years and therefore there would be six full years of state help to these institutions, with the admonition that at the end of six years they must govern their institutions and provide for themselves out of their own charity and not out of the charity of the state. I offer this as an amendment.

Mrs. MILLER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mrs. MILLER. Mr. Chairman: I would like to say that I agree wholly with Judge Gordon, and he has left very little to be said in regard to the situation; but there are a few facts that I would like to bring before the Commission. Had the drafters of the Consti-

tution of 1873 had just a little more courage we would not be forced to discuss this situation today, because evidently they felt they were going to wipe out most of the appropriations to private charities by the amendment that they had in section seventeen. I would like to point out that at that time there were only eleven institutions receiving state charities, in the sum of four hundred and twenty-one thousand dollars, and today we are facing the fact that in 1919 and 1920 there are two hundred and ninety-five institutions receiving aid, private institutions, and that sum amounts to something like seven and one-half million dollars; so it is going to take a great deal more courage on our part perhaps to wipe out this evil that has grown up than it did on theirs. I agree with Judge Gordon that we have no moral right to tax the people and then turn over to private individuals the expenditure of that money, involving no responsibility to the taxpayers. We have this morning adopted a budget system. My understanding is that the budget system endeavors to adjust the revenues of the state in a sane and sensible way, and I wonder if this Commission would feel that when we are giving one-fifth of our revenues to charitable institutions, when we are not able to support our school system, when we are facing the fact that we will probably not have enough teachers to run that school system, whether we are making a safe and sane adjustment of our budget at present. Then I would like to point out to the Commission that other states have had this question before them and that twenty-one of those states give no aid to private charities. Fifteen give only to certain charities which take care of patients that might be considered the burden of the state, as dependents, children and defectives; then there are nine states that give indiscriminate aid as we do in Pennsylvania, Pennsylvania being by far the worst offender. I would like to point out also that there are certain charities that really are the business of the state. You can consider them for instance as the permanently sick, the insane and the feeble-minded. We have correctional institutions and dependent children that we should consider the first wards of the state. Are we doing that properly today? From a limited personal experience I know that we are not taking proper care of the charges that belong to us especially. The matter of the feeble-minded—I would like to point out to this Commission that in 1913 the legislature appropriated three hundred and sixty thousand dollars for the home for feeble-minded women of child-bearing age, the Governor being obliged to cut the appropriation of that particular institution to forty thousand dollars. At the next session of the legislature it received no help whatever. In 1917 it secured one hundred thousand dollars for equipment and nothing for maintenance. Therefore very little was done. In the last legislature one hundred and eighty thousand dollars were appropriated, so that the home for feeble-minded women of child-bearing age is just about to be opened. Now, I understand in the meantime thousands of feeble-minded children have been born because we did not look after our particular job in that particular case. I do not feel indifferent with regard to our correctional institutions in the county of Allegheny. There is no home for delinquent girls, and we must put them in charitable institutions under private control. We take them out of normal and abnormal life, as it may be and put them some place where we have no jurisdic-

tion over them. I believe that the same thing will be found in many other counties. Then I wonder if the Commission has ever thought, for instance, take my city of Pittsburgh, for many years we had the highest typhoid rate in the state, in the world probably. We last year asked the state to levy taxes to help us take care of the people who should never have been sick, either because we were too lazy or niggardly to have a good filtration plant. The same thing is doubtless true of many other communities. They are asking the state to do the work that primarily belongs to them. It seems to me that until we can take care of the things that really belong to us we have no right to appropriate money to private institutions, privately run; and personally I should want to withdraw all appropriations from private institutions as soon as feasible.

The CHAIRMAN. My opinion is that there are no privately owned normal schools, or possibly one, the deed to which is about to pass to the state; therefore, the phrase, "other than normal schools established by law" could be eliminated, because all those normal schools will be under state control. I think that is the condition today or is about to be the condition.

Mr. GORDON. Mr. Chairman: Of course, that elimination could be made by the committee on style.

Mr. PEPPER. Mr. Chairman: I understand the question before the Committee of the Whole is upon the amendment proposed by Judge Gordon to the suggested section reported without recommendation by Committee No. 1. I understand that the amendment suggested by Judge Gordon presents for consideration two distinct questions, one a question of fundamental principle and the other the question of whether the present method of administering charitable appropriations be further continued. The fundamental question is whether or not we are to continue in any form the policy of making appropriations of public money for charitable, educational and benevolent purposes to corporations and associations not wholly under the control of the state. That question I have been at pains to consider in the light of all the information that I could secure upon it. I have availed myself of the opportunity of consulting with Judge Johnson, the head of the State Board of Charities, and I have heard the many cogent things which he has to say respecting the advantage of a system of legislative aid to charitable and educational institutions privately initiated and in part privately supported. I have also sought conferences with Mr. Pray, the highly intelligent executive secretary of the Public Charities Association, who has given me the point of view of those who believe with Judge Gordon and Mrs. Miller that the present system in Pennsylvania is not sound in principle and ought to be abandoned. If we were to decide, sir, to recommend an abandonment of the system, we should have to choose between three courses. One course would be to cut the appropriation off by constitutional prohibition. The second course would be the course proposed by Judge Gordon, to specify a time in the future, a date in the future after which no state appropriations could be made. The third course, which is the course advocated by Mr. Pray, fixes a date in the future after which no appropriation shall be made and prepare for the coming of that date by scaling down the appropriation each year ten per cent at a time, over, we will say, a period of ten years, after which no appropriation at all shall be made. The

amendment under discussion adopts the second of these methods of dealing with the question. Fundamentally I suppose the problem before the committee of the Whole is this; whether the individual dependent, whether he be defective child, defective or otherwise dependent adult or sick person, is likely to receive the best care, the most healthful and developing treatment, if he is cared for by an institution managed centrally by the state through executive agencies created for that purpose, or whether he will in the long run receive more satisfactory and effective treatment in an institution which is managed and controlled by unsalaried volunteers, who either run the institution and in part maintain it from the less worthy motive ascribed to them by Judge Gordon, or the more worthy motives, which I am sure in some cases actuate those who give their loving service for the public good. Fundamentally this is the question; whether the dependents, whether the sick persons, whether the defectives are going to be better cared for in the state institutions, or whether they are going to be better cared for in the institutions which are privately controlled, because I take it that the justification for appropriating money in these ways, if there be justification, is not that the state has resting upon it the obligation to be charitable or philanthropic; that is not the justification. The justification, if any exists, is that by that method of expending the state's money the ultimate recipient of the benefit of the appropriation is thereby better cared for and the community in which he lives made a happier and more prosperous community. If we answer that, in general, it would be a better thing for the community to turn over all or the greater part of the care of those for whom the state is primarily responsible to institutions owned, controlled and operated by the state than the cutting off of the charitable appropriations sooner or later. If, on the other hand, we accept the conclusion that there is much to be said in favor of the view so strongly advocated by those who favor the present system, namely, that the best and most effective way to deal with cases of dependency, or cases of the defectives or cases of the sick, is through institutions run by those who are volunteers, who are serving for the public good, then we shall address ourselves, not to a consideration of when we shall shut off those appropriations, but we shall address ourselves to the consideration of the very intensely practical question of how we can reform the system under which these appropriation are made and administered; because I fancy there will be no difference of opinion among us that there is a very great evil in the system as it is at present administered, an evil that cries aloud for remedy. Now, I have not any great light to throw upon the fundamental question whether or not we shall or shall not justify the system of appropriating public money for charitable and educational uses to corporations and institutions not purely under state control, but I suggest this; that many of us are in doubt upon that subject, and we are in doubt about it notwithstanding the fact that for many years the appropriations have proceeded upon an unsound method and under a system that is fundamentally defective; and I for one should very much prefer to suspend my judgment as to whether these appropriations for charitable and educational purposes to institutions not under state control should be discontinued altogether until we have been given an opportunity to determine whether a system cannot be devised in accordance with which the thing may

be done with safety to the state and with advantage to the community, and with due regard to the importance of preserving individual and private initiative in this great field of endeavor. I put that to Mr. Pray, and he said that the difficulty with that suggestion is that many of those associated with him would object to a period of experimentation under favorable conditions for fear that at the end of that time the system would only be entrenched in the commonwealth; to which my response was that that is the same thing as to say that you object to an experiment tried under favorable conditions for fear that it would turn out in a very different manner from your present conviction. It seems to me that there is much to be said in favor of suspending judgment as to whether the guillotine is ultimately to fall upon this system pending a time of administering it on a far more sane and sound basis than has heretofore been the method of procedure in this commonwealth.

The second question that Judge Gordon discussed was the question of method of administration which was to prevail in the interval between the adoption of the proposed amendment, if it be adopted, and the year 1927, when under the amendment the appropriation would cease. I suggest, sir, that the method suggested is an undesirable one for two reasons. If I understand it correctly, it does not contemplate any scientific method of determining how much money is to be appropriated at any session for charitable purposes. It makes no provision for the way in which the legislature is to inform itself with respect to the lump sum it is to disburse for this purpose. It leaves it to the legislature to say haphazard or by guesswork that we will give such and such a percentage of the revenues of the state, or such and such a lump sum, arbitrarily determined, for charitable purposes. That seems to me to be beginning at the wrong end. The question is not how much money the state should give in charity, as if the state was a benevolent and conscientious individual giving away his own money. The state government is trustee of the people's money, and none of this money should be put at the disposal of the Governor or anybody else, except upon the basis of the most careful calculation and estimate respecting the need for the money, the sum which will suffice to answer the purposes in question. To say the legislature may name a lump sum arbitrarily and turn it over to somebody else for distribution, seems to me to be beginning at the wrong end, and to be defective because of the failure to apply a scientific method of determining what the sum shall be that is thus to be appropriated.

The second reason that it seems to me to be an unsound method is because it puts into the hands of the Governor a great sum for distribution at his unchecked discretion, thereby making him the almoner of the state with all those evils attendant upon such a system which Judge Gordon has so eloquently described. It will not do, Mr. Chairman, to reverse the budget process in the case of the charitable appropriations and to put the budget system into effect in the case of all the others. The proper method of procedure is to cause the suggestion for appropriations for charitable purposes, like all the rest, to originate with the Governor, to be made the subject of inclusion in his budget proposals to the legislature, and then let the legislature act upon the budget items which he has submitted in the same way that the legislature will act upon other items in the

budget, saving certain safeguards peculiarly applicable in the case of charitable appropriations, which at the right time I should like to suggest for the consideration of the Commission.

But the question now being upon the amendment proposed to the report of the committee, I venture to urge, sir, that the amendment is objectionable for two reasons. In the first place, it cuts off by anticipation the system of appropriations to institutions not under the control of the commonwealth for charitable, benevolent and educational purposes, without giving the commonwealth an opportunity to test out the value of such an appropriation system as will preserve in healthy combination private initiative and state grant and state supervision. In the second place, the method of administering the system in the interval between now and 1927 is defective because it leaves the legislature to guess at the amount which it is to allot in charity each year, or every two years, and then makes the Governor the almoner of the state to distribute the charity fund in his uncontrolled discretion. At the right time I should like, with the permission of the Commission, to propose a substitute for the proposed amendment now under discussion. I do not offer it now, because to inject an elaborately drawn resolution will perhaps cloud the air and obscure the issue that the present amendment raises.

Let me say that the proposal that I shall wish to press upon the attention of the Commission is a proposal that when the Governor shall submit his budget to the general assembly, he shall in that budget specify either a lumping item as a result of his study of the whole situation, specifying what is to be appropriated for charitable purposes, or else items covering the appropriations by classes of beneficiaries, and not by named institutions; together with a plan for the division of the appropriated fund among the ultimate beneficiaries according to a plan of distribution, taking account of the relative importance of the classes, and, within the classes, of the relative conformity to the prescribed standards of excellence, on the part of the ultimate beneficiaries. Then let the legislature be limited in its functions to striking out items or reducing them in the case of these charitable appropriations, but in no instance permitted to increase them; in no instance permitted to make appropriations to an individual institution, or to a particular charity; in no instance to modify the Governor's plan in its application to particular beneficiaries; but with power to modify the plan as a whole. You will then introduce into your distribution of the charity money the principle of general as distinguished from special legislation. Almost unconsciously we are discussing in connection with this matter of charitable appropriations the evils of special legislation which in their broader sense we have dealt with elsewhere. That, it seems to me, is going about the thing right end foremost; to put upon the Governor the responsibility of submitting a scheme to the legislature, leaving the legislature to appropriate in accordance with the scheme in a way which eliminates special appropriation to individual associations or particular institutions. But when you proceed the other way round the legislature names haphazard a lump sum and makes the Governor an irresponsible almoner. I very much hope, sir, that the amendment under consideration will not prevail, that we shall not make the mistake of shutting down now on this great combination of state activity and private activity until we shall have had first an

intelligent system of distribution of the state money, and in particular also that we shall not adopt any method of distribution which makes the legislature appropriate an arbitrary sum, and leaves the Governor in the position of irresponsible distributor.

Mr. STACKPOLE. Mr. Chairman: I have listened with much interest to the discussion of this question. I thought up to today that this Commission was broad enough, and safe and sane enough, and headed in the right direction, but I fear today that we are rapidly approaching the paternalistic in revision. I do not know whether the Governor has yet decided to resign, but I suspect he will should all these amendments go through. No Solomon, in my judgment, has yet appeared, who would be able to develop the system that we are now discussing with any great satisfaction to the people of the state. It occurs to me that when we propose to impose upon the Governor of the state the great and tremendous responsibility of preparing a budget which would be satisfactory to a considerable number of people of the state, and on top of that ask him to administer the charitable grants of the state, then we are assuming that he is a much stronger, a much more courageous, and a much wiser man than he is, or any other man could assume to be. Charity has no creed. Like my friend, Judge Gordon, I am also a Presbyterian, but during the last few years, the period of the great war, I happened to change my views somewhat respecting what are known as sectarian and other matters. It was my privilege to serve as chairman of the United War Work Committee, comprising ten central Pennsylvania counties. I was associated with Catholics, and Jews, and Presbyterians, and Methodists, men and women of practically every faith. I do not know of any experience that has so impressed me, that has so changed my views. There was a time that I regarded certain faiths as impossible. I do not believe so any more. We did not ask the faith of men when we went into this great war, and I submit that we are perhaps moving in the wrong direction when, at this late day, we assume to strike down the great charitable institutions because they happen to be managed or controlled to some extent by sectarian organizations. I feel very deeply the danger, if I may so suggest, of our proposing to wipe out now, or hereafter, the great agencies for good that have been established for so many years. I cannot imagine this wonderful commonwealth of ours being no longer a Good Samaritan. I have not very much confidence in an organization or a department which mechanically and cold-bloodedly administers charity. I doubt whether the people of this state would consent to it. I suspect that the rock upon which this proposed Constitution might break would be any proposition that would mean the wiping out of our present system of charitable appropriations. I realize perfectly well—I have not been around the legislature for many years without realizing the defects in the present system, but that is a matter of practice and method, and it ought to be possible for the legislature to so change the system as to safeguard the moneys of the commonwealth. These moneys come, not from one class of religious belief, but from the taxpayers of every belief, and when that money is appropriated, as it is appropriated for the several institutions, the non-sectarian and the sectarian have the same interests, and under proper control and under reasonable regulation there can be no danger, as I see it, in the proper distribution of the commonwealth's grants

from time to time. It is a very grave proposition. I do not think that there is anything before this Commission that approaches it in importance. I have no doubt whatever what will happen to this proposition when it is submitted to the people now or in after years. I do not have any idea whatever that it would be adopted by the people. Also I think that we should concentrate our thought, not so much upon abandoning the present system, as upon a proper regulation of the system, with a view of encouraging these wonderful agencies for good, scattered all over the state, in every little hamlet and village and town and city. Why, you would hear such a protest as you never heard before as you go out from this body favoring this change. If the old system of encouraging men and women of the very best character in their communities to go on in their good work, if that system is an evil and you are going to turn their charity over to a great machine of the state—you know how much heart there is in that kind of a machine,—never in the world would the people of Pennsylvania approve of such a change. I listened with a great deal of interest to Judge Gordon's very forceful statement of his position. I hesitate even to differ with him. I have the greatest admiration for his personal ability. My recollection of him goes back many years, to his service in the Senate, and he speaks out of his full experience; but I cannot agree with him that the time has yet come in this state to wipe out what I believe to be a system that must be perhaps safeguarded in some way, but in principle must remain.

Mr. CARSON. Mr. Chairman: I had not the benefit of hearing the discussion which took place during last week when the suggested amendment was reported, nor have I had the benefit of being a member of the committee from which this particular provision has been reported, but I have listened with almost entranced interest to the exceedingly able discussion which has taken place. The gravity of the subject has evidently impressed every speaker, and the silence that has pervaded this hall while the discussion has been going on indicates a keen interest on the part of every member of this Commission. We are weighted down with a sense of personal as well as official responsibility. Now, I have listened with a mind entirely open, because I had no views of my own, to what Judge Gordon said. Powerfully put! Put in a way that would almost coerce acquiescence in his conclusions. I have heard the impressive statements of facts from Mrs. Miller, facts and figures which indicate a condition not of indifference, but perhaps of unconscious incompetency on the part of a great district in Pennsylvania in dealing with a great evil. I have listened to Mr. Pepper's balancing of the objections to the existing system and to the proposition that he has made as a substitute. I have listened also to the impressive words of Mr. Stackpole in regard to the danger and consequences of an injudicious, intemperate attack upon the existing system. One of the advantages of being here in Committee of the Whole is that not one of us is arrayed along any partisan line. We have no pride of authorship in this plan or the other one. We are all actuated by an earnest desire to report out of this body some result which will prove itself in the judgment of the great public as an improvement upon existing conditions, and as a constitutional bulwark behind which public interests may hereafter take shelter for the next fifty years or more. Now, I consider that we cannot always reduce our action to a simple, cold, logical proposition,

nor can we put the square and the compass to the meaning of this or that proposition, and say because it is contrary to a theory that we should so guide ourselves as to support the theory at the sacrifice of the possible or probably result; nor can we so legislate that human nature is changed in its course. We are dealing with human beings; we are human beings ourselves, subject to the same passions, emotions, ambitions, vanities and weaknesses which actuated our fathers, and which our children and children's children will inherit from us before they reach an ideal condition of humanity. Now, I will grant you that there are numerous instances of individuals banding themselves together in the management of particular institutions, arrogating to themselves, and I will put it as strongly as possible, arrogating to themselves the exclusive right of management, feeding to their own satisfaction on that sort of self-grown pride, which amounts to personal vanity, in occupying positions in a community which represent influence and power and perhaps a certain ability to distribute benefits in the direction of favored individuals. I grant you that doctors may be so identified with an institution that they obtain admission to the wards of hospitals of their own favorite patients. Grant all that. Grant that institutions may be organized year after year by people in large or small towns for the purpose of obtaining some sort of social, financial or influential position in the community which without that institution they would not possess. Grant all that. That is human nature in its weakness. Can we change that by legislation or by constitutional provision? No. Now, what do we have? With all those weaknesses, let us see at least what the merits of the institution are. Ever since the shores of the Delaware were trodden by the footsteps of the associates of William Penn, with charity, mercy and truth in their hearts and in their creed, the representatives of every race and every sect came here; not as in Massachusetts, people of purely English blood under one creed; not as in New York, the Knickerbockers or the Netherlanders; not as in Virginia, the English Cavaliers; not as in Delaware, the Sweedes; not as in South Carolina, the Huguenots; but there came to these shores, first the Dutch, then the Sweeds, then the English, then the Germans, then the Welsh, then the French, then the Scandinavians, then the Scotch, then the Irish; Quakers, Mennonites, Dunkards, Amish, Moravians, Episcopalians, Catholics, Presbyterians; every race and every creed came here to the shores of this commonwealth, until there was distilled from mixed blood in the alchemy of America, through the pressure and hot fires of the Revolution, and through the successive struggles for religious and political freedom, the most precious elixir of the ages in the constitution of the American people; and it is now here with all its strength and all its weakness.

Now, what do these good men and women do? Grant you that they are successful in the management of their institutions and that there may be cases of promotion to certain favored individuals. Are they growing fat and rich themselves from the charges for the services? No. These men and women unselfishly devote themselves day and night to the management of institutions for the relief of the suffering and poor, for the widow and the child, for taking care of the cripples of the factories and the victim of the roadway accident from a too rapidly passing machine. They do not stop to inquire as to the religion or the education or the sect or the creed of the poor

cripple who is lying in the ditch. They take him to the nearest hospital, and administer charity. Now, if you cut them off, if you say to them the state is so narrow in its view that we do not intend to give them that state appropriation, what have you done? I am dealing with human nature as it is. You have cut out the taproot of your charitable institutions. There is no longer any incentive. Oh, no. As Mr. Stackpole has said, you make it what? You convert every institution which at the present time represents the highest exertion of a heartfelt devotion of unselfish men and women to acts of God and mercy and convert it into a political machine. State institutions to handle state money! Well, we have not had even during the agony of this great war any demonstration made to us of the superiority of state management, whether of our railroads or other public enterprises, which would satisfy us that public management, though theoretically representing the government, is better than private management, or that it is as intelligently and unselfishly operated or as economically administered. Let word go forth from one end of this great commonwealth to the other that the stream of charity, which does not pour forth for individual advantage, but which is distributed through the instrumentality of private institutions as aids to the insufficient appropriations which the state gives, is to end, and ruin will follow. No charity lives alone on the state appropriations, but is aided by individual legacies and endowments, which go to swell the general current of benevolence.

Suppose some scheme for the alteration of the agriculture of this great valley of the Susquehanna were projected, so that the waters that come down from the northern and the western branch, where they unite at Sunbury, were to be diverted and a large part of the moisture which nature intended to shed into this great valley was withheld before it reached the waters of the Chesapeake. What would be the effect on your agriculture? Your clover fields would wither, your alfalfa, your timothy and other crops, your green fields would disappear, your cattle would die and your farms would gradually dry up. Are you going to threaten the great charities of the state simply because we say these individuals are not accountable for state funds? Why cannot we provide that wherever an institution receives state money that it shall account for the money received to an auditor? Or let the Auditor General go over their accounts and say, "We gave you four hundred thousand dollars, tell us what you did with it, and until you can show an honest and intelligent administration of that, you have not proved yourself to be an efficient administrator." To simply cut them off and pronounce their doom in 1927, or seven years hence, and say that then the guillotine shall fall, will cast a dread to overspread not merely the institutions of the state, but upon the unfortunate victims who are in their beds, wondering from where relief will come. Now, that is a big subject, and it ought to be discussed carefully before we attempt such a drastic measure as to cut them off, either at the present time or in the future, however definite you make it. It is like fixing a day for a man's execution. He watches the clock day by day and night by night, and as he gets nearer and nearer to his doom, his heart grows heavier and heavier. You might just as well suspend his misery and put him out of existence speedily, if you are merciful. Instead of doing that, let us say that we are going to demand satisfactory ac-

counting in a business manner. Do not we get the same control that we would have in a state institution, and do we not have also the benefits of that? It seems to me it would be the greatest loss to this commonwealth if having the actual sympathy and the heartfelt, earnest devotion of unselfish men and women in the cause of charity to make them feel that either their motives had been aspersed or their characters had been misinterpreted, and they were told to go off and withdraw their hands as unworthy assistants of a great state in caring for its suffering and its poor.

MR. ALTER IN THE CHAIR.

Mr. REED. Mr. Chairman: I do not like to take up time after the eloquent speeches that we have had, but I want to join my protest to that of Mr. Carson. My father was superintendent of the insane asylum at Dixmont for many years, and I passed my minority there, and to forestall any member of the Commission, I probably show traces of it. But that hospital was run by charitable people in Pittsburgh. A case was found in a poorhouse, an intelligent, educated girl, lying on a bundle of straw, fed with scraps of food, and I saw that girl, up to the time that I left the hospital, a happy inmate, and it was largely through her case, as I say, this hospital was started. Now, I read somewhere an article some years ago by a magazine writer in which he used an expression, and that has remained in my mind; of course, he used it about this band of uplifters and the efficiency experts running around attending to other people's business, winding up with such things as the notorious Pittsburgh Survey; but he called them "soldiers of the common good." That expression, it seems to me, applies to the thousands of good men and women in this commonwealth who are giving their time and heart to this work without any idea of recompense. I do not know, it may be in Philadelphia, that it is considered of social advantage to be on a board of directors of a hospital or association or institution of that kind, but I know in Pittsburgh we have to hunt the people to go on the board and sort of drag them into the work; once in, and once interested, they usually stay in and make good managers. It is not easy for me to talk this afternoon, but I do want to join my protest. I do not want to see this state Prussianize its charity. I have no fear that if you pass this amendment in this body that it will ever become effective. I do not believe either in the utter depravity of the legislature or that they trade these appropriations back and forth. Of course, I have not had the experience here that some of the other gentlemen have had. But I know how it is with our appropriations to the western end of the state. It seems rather more difficult to get some member of the legislature to take them up than it is the other way. As far as the fear of the effect, if he does not do everything that a board of managers wants, which Judge Gordon says he is afraid not to do, he is afraid of losing the votes of the godly—I never knew the godly elected members to the legislature—I really think my friend drew on his imagination for a good many of his thoughts; and that, as Mr. Carson said, if you cut the taproot of charity and Prussianize or make these institutions state institutions, you will do, I am not afraid that you can do it, but we are talking of theory now, you will do the greatest harm in the state of Pennsylvania that it is possible to imagine.

Mr. GORDON. Mr. Chairman: I have listened to this discussion with a great deal of interest, and I am amazed at the trend it has taken. I have heard each of those who have opposed the amendment which I offered seriously announce that if the state ceases to give these institutions money to sustain their charities, these good people will abandon their work and give the charities up. What does that mean? Mr. Carson says that if you take away the state aid you will cut the taproot of charity. Is that so? If it is so, then this large number of private institutions could not exist without the support of the state. If that is so, the argument is still stronger in favor of those who hold as I do, that these are really institutions living on the taxpayers' money, and under the cloak and subterfuge of private charities are really conducting public charities with public means and with only a sprinkling or modicum of private charity. Is that really true? If that is so, the sooner we cease this condition the better. If that is so, if it is so that these very religious people whom Mr. Carson marched in review before us, who came over with Penn or afterwards—and I saw them march with their curious garb before my vision—is it so that those people will not maintain charities unless the state helps to support them? For one I do not believe that proposition; and I do not believe the appropriations are the taproot of those charities.

Mr. Chairman, this matter began when the state was young. When Penn came over here and for a century and more afterwards the pioneers were not rich. We had not developed Pittsburgh then, for instance, with all that goes with that name. Our great commerce was not developed. We did not have one hundred millions of people. We did not own one hundred and thirty billions of securities, eagerly bought up and I hope as eagerly retained by those who bought them. We were a young commonwealth, and these charities had to be established when they were needed for the time being by those who were charitable, and they were helped by the state at first, and properly so. The cry that went out for help for those charities is the cry that has gone up vehemently and powerfully ever since. In those days of infant industries, they were infant charities, under the protection of the state in their infancy. The state has grown and grown rich, and the charities have grown and grown rich. I have no statistics to guide me, but I presume that the great body of the wealth of the country is held by the people representing some one or other of the numerous religious beliefs of our people. They have got the money. But what has happened is that this thing being fixed on the financial system with the growth of years, and with a laudible desire, which I have not impugned either in motive or results, with a laudible desire to see their charity extended, they have sought money to increase it by the addition of buildings, by the increase of staff, and year by year, and year after year, each previous appropriation has plead for another, until the sum has grown and grown. I wish we had the figure here. I think there was a promise that we should have them here. I cannot tell how many millions of dollars, but these small infant charities, once properly supported and helped by the state, have grown into colossal institutions covering blocks in some cities, maintaining costly and important staffs, some of them adjuncts to the investigation of science. They are constantly asking for added improvements to use all the appliances they can. They are like a

great industry crying for more capital that it may utilize its plant to the best advantage. And year after year they are getting it. But I do not believe that the churches and benevolent people would cease, if the appropriations would cease, to maintain these charities. That is an ungracious attitude; yet I almost seem to hear, if that be possible, sneers and criticism of those opposed to my position in this matter. I should like to see private benevolence exhaust itself in maintaining charities. I never knew a man ruined by charity. I never knew a community or a church harmed by charity. I think the giving of the great wealth of the country is a matter everybody ought to recognize more and more, that it is the obligation to use this wealth for public purposes. And therefore, Mr. Rockefeller, with his sagacious benevolence which has characterized him so often, has given of his wealth to found important charitable and scientific institutions; and there are others whom I will not name, but they are giving towards public charities. These charities will not disappear over night, and nobody thinks of supplanting them with something else.

But there are many directions in which the charities of the state are estopped because of these growing gifts made to private charities. I had no particular one in view, I did not mean to assail the motives of anybody who gives, who gives even a cup of cold water in His name. Those who did it, did it without any thought of posthumous pride which induced the making of an imperfect and inadequate devise to establish an institution which afterwards had to call on the aid of the state to maintain itself, and which has continued to claim the aid of the state ever since to maintain it in the name of the original donor of the endowment. I want to suggest one thought that just occurs to me. Our rich men will have an added inspiration to maintain these charities, and in this way the very rich can now give from their incomes large sums to escape taxation and surtax under the income tax law, and what would seem to be a gift of one hundred thousand dollars to take the place of the one hundred thousand dollars that the state would have given, means in effect very often a gift of thirty-five thousand dollars, because if it had not been given to charity it would have been taken by the government from the very rich in the way of income tax; and probably this income tax may stimulate additional private generosity. But I resent the imputation, I deny the argument, that the withdrawal of state aid is to strike down private charities. I believe it will stimulate it. If it does not stimulate it, it will mean that the private charity behind these institutions is not as unselfish as it claims itself to be. What great denomination would permit one of its charities to languish and die if the state ceased to support it? I do not believe any one of them would permit their great charities to suffer; but I do believe that the fact that we can look to the state for aid induces many a testator in these churches not to think of making gifts by will to these institutions which are supported by state aid. I think every church will be helped, and every church charity will be helped, in the greater activity and greater pride and greater philanthropy of these people, if they cease to be dependent upon the bounty of the state. I renew my conviction, founded in early education, founded upon reflection, and grown into a part of my political character, that the present charitable and educational establishments of the state ought not to be supported by the taxpayers' money.

Judge Reed has spoken of the fact that his father was the superintendent of Dixmont, an institution for the insane in western Pennsylvania, and this impels me to tell a fact in my experience with respect to the insane hospitals of the state. In 1883 I was chairman of the special committee on the lunacy laws of this commonwealth, and an investigation was had of the insane institutions of the state. With my colleagues I traveled all over the commonwealth examining the public the quasi-public and private institutions for the insane of the commonwealth, and we found a terrible situation. We found that the insane institutions maintained exclusively by private persons were very often used for criminal and inhuman purposes. We found the insane were treated without humanity even in the public institutions, with the result that a law was fabricated, was prepared in 1883, which I had the honor of presenting in the old Senate chamber, in which the laws touching on the insane were codified in this commonwealth. That is the law of the state today, and under that law the private insane institutions come under the scrutiny and control as well as the public insane institutions, Dixmont among others. I very well remember there was an important representative from Dixmont who appeared before our committee and made an argument against the law which was proposed, and which was passed, and which is the law of the state today. Authority resents giving up privilege. Of course, all those interested in those institutions do not want to give up public help, and, of course, there will be clamor, and Mr. Stackpole is right, there will be clamor against the Constitution at first for the reason that the people would not be deceived; the newspapers, the press, the pulpit and the intelligent members of all these denominational institutions will look at these things rationally in the end. I think one or two of the great churches will be glad. Oh, how glad! They ought to be glad of the fact they will not have to demean themselves by hiring lawyers and sending them up here to plead with the members of the legislature for appropriations from the state to maintain their charities, and when they get them there afterwards go to the Governor and on their knees almost beg that in the trimming process which he goes through in clipping these exorbitant bills, that their institution might not be clipped the most, but that some others shall feel the shears most keenly. It would be an elevating thing to stop this subsidizing of charitable impulses of christian churches. So much for this matter, so much for cutting the taproot of charity; so much for destroying at a blow the great philanthropic institutions of the state. Now, moreover, the state is denying money which it ought to spend for those charities which particularly belong to it. I am glad Mr. Reed brought up this insane subject. It is like him. The insane asylums of the state are overcrowded. Norristown I think has a normal capacity of about a thousand. I believe there are sixteen hundred in it, and they lie in the corridors because there is no place to put beds, and the courts continue to send them up there. I think that is true of every insane institution in the state; it is overcrowded. It is inhuman to keep them in that position. There ought to be more of them and larger ones, because of all the children of sorrow they call most loudly for the help of the state.

But the insane today are sadly neglected in this state by the legislature of the state. And why? Because, more numerous than those poor ones in those institutions, more potent than those who are their

benefactors, are the people who come here every two years to beg or demand of the legislature millions for privately conducted charities. There is no argument, I think, in fundamental political justice, I believe there is no argument in the psychology of giving, which will defend this system; and although it may require education for some time, this thing must stop. Believe me, Mr. Chairman, it will have to stop some time. I am not tenacious of the method set forth in my amendment that Mr. Pepper has criticised. He says that under my amendment all the legislature would have to do would be to vote a gross amount for that sort of charity, and the Governor would have the invidious duty of selecting those to whom the charities would go. Is it not more invidious in him than it is in the legislature to select those more likely to be just, those more likely to be wise, those more likely to be economical in the distribution of the appropriations, than it is for one man upon whom the eyes of the charitable will be concentrated, or the two hundred and seven in the lower house and the fifty in the upper house to vote almost wholesale on the demands of these private charities? What would be the remedy of Mr. Pepper? He would have it, under the budget system, in a bill in which the particular charities would be designated with the amount each is to get. Surely that requires of him an invidious discrimination and distinction more than my poor amendment does. Limit the legislature to not give more than the Governor says, but allow the legislature to pare down. Does anybody imagine that the legislature will pare down the gifts of the Governor to those institutions? They would not dare to. I am not tenacious of the method, but all I should like to do is to have an understanding by the good people of this commonwealth that after 1927 their very worthy purposes shall be carried out by themselves without state aid, and the state shall build the asylums it needs; shall build larger prisons even, unless prohibition should curtail their inmates; they shall build adequate penitentiaries, adequate almshouses where they are needed; adequate insane institutions, and they are needed all over; and also such other charities as may come within the distinct purview of the state. I trust no one will think that I reflect upon any person or upon any institution. But I reflect upon a principle. I inveigh against an idea which I believe pernicious. I would like by the adoption of this amendment to see this commonwealth start on the right road to have the moneys of the state expended by the state authorities, and not give them to private institutions or individuals for private administration.

Mr. SCHAFFER. Mr. Chairman: I think every member of this Commission is desirous of solving this most important problem with the best result possible. It seems to me that a realizing sense of what the situation in the state is may be helpful to the discussion. It further seems to me that Judge Gordon's amendment ought not to prevail, as he has drafted it, for the reason that in a very important respect as related to his amendment, we have already provided by action taken this morning, with reference to the budget provision, how charitable appropriations shall be made, that is to say, that they shall be made and that the budget shall contain a complete plan of proposed expenditures and estimated revenues for the two fiscal years next ensuing, including expenditures for charitable and educational purposes. So that is all provided for by the action which we have taken with respect to the budget

provision, that when the budget shall be drafted provisions are made for charitable and educational purposes. Now, I think the discussion has proceeded along a somewhat narrower line than the discussion really merits. Let me say in passing that, as I recall it, it was through the discussion which arose in the Massachusetts Constitutional Convention, regarding sectarian and charitable appropriations, that the split took place which for weeks held up that convention and which, if it did not result in the defeat of the constitution, put it in great peril. Now I think this section is beyond either the seventeenth section as drawn in the Constitution, or the fifteenth section as existing in our present Constitution. The discussion has gone on the basis that all appropriations that are made to charities are made to charities of two kinds. Either they are made to charities which are under the direct control of the state, or they are made to charities which are under sectarian or denominational control. Whereas, the fact is that a vast amount of the money that is appropriated in the bill goes to institutions which are not in either one of these classes. The hospital in my own city which receives state aid is not a state-controlled hospital, nor is it a sectarian charity or denominational hospital. I know that is the condition of affairs as to scores of institutions in the state which receive state aid. The people interested in those institutions do not lend their aid to the institutions because of the stimulus of any sectarian or denominational belief that they may have, but they lend their aid to the institution because of the general charitable make-up of their nature. Now, it does seem to me that to strike that down, to say to all the communities in the state where charitably inclined people are reaching out with their thoughts and expressions to every one who is outside of the limits of the organizations, as to what efforts they will put forth; to strike that down, unless we are sure that the state can function in that respect and can carry on that charity as well or better than it is carried on, would be a mistake in judgment upon the part of this Commission, or a mistake in judgment upon the part of the people when they come eventually to pass upon the different provisions of the Constitution as they shall be submitted to them for approval either in the one way or the other. I do not agree with the thought that the same effort would be put forward by the people, or the charitably inclined people of a community, to aid these institutions which are solely under state control as would be put forth, and is put forth, by those people in aiding institutions that they understand require their aid, if they are to exist; because there are in this state a very great many institutions performing a very large part of the charitable work of the state, which, by reason of the poverty or the demands made upon the particular community in which they exist, could not survive as to their charitable character and carry on the work that they do carry on if it were not for the aid that the state extends to them. Every one of us is prone to put up a man of straw to tilt at, particularly if we do not know just exactly what the real fact and what the real situation is. Now, I will hazard the thought, with the conviction in my own mind that it cannot be successfully challenged, that there is no haphazard method of administering the charities of the state today, because it has fallen to my lot to see the State Board of Charities in this state in operation, and it has fallen to my lot to sit at the side of the Governor while the Governor

took the appropriations in one hand and the recommendations of the State Board of Charities in the other, to see how the appropriations as made tallied with the recommendations of the State Board of Charities. I know of no body of men in the state who render a greater service to the state, render it absolutely without pay, than the State Board of Charities, who visit and investigate all the institutions that exist in the state and that ask the state to aid them in carrying forward the charitable work in which they are engaged. It is not the fact that the appropriations as they are made by the legislature, or the appropriations as recommended by the State Board of Charities, are on any haphazard basis. The president of the State Board of Charities happens to be the president judge of my own county. He has been a member of the State Board of Charities ever since I almost can recall. He thinks, and I know that there is grave reason for agreement with his thought, that if we build up in this state a system of charities, state controlled, state administered, state supported entirely, that we have departed from a course of treatment and conduct, so far as our charitable institutions are concerned, which, to say the least, is extremely revolutionary, and which is totally uncalled for and experimental so far as Pennsylvania is concerned, and which he believes, after almost a lifetime spent in contact with the state charities, would not work out as well, so far as administration is concerned, as the present system works out. Now, I do not know how many so-called sectarian or denominational institutions there are receiving state aid. I mean institutions which in the broadest sense of the term could be said to be sectarian or denominational. But what I do know is that there was a bill in equity filed within the past year to enjoin the appropriations made by the legislature to sixty-six institutions, which were said to be sectarian and denominational, and I appeared in behalf of the commonwealth in defense of the appropriations, when the bill came up for hearing in the Dauphin county court.

There is no more dangerous subject for a constitutional convention to attempt to deal with than something that broaches upon the religious antagonisms, the religious prejudices of different groups in the community. It is to keep that out of this body and to keep that out of the different things that shall be done, and the future draftings of the Constitution that shall take place, that impels me to make this observation. It is not what some man says in a bill in equity is a sectarian or denominational appropriation. It is, in the final analysis, just what the court has said as to what are sectarian or denominational appropriations. And speaking for myself, I agree with Judge Gordon that all history teaches that there ought to be a barrier erected against the appropriation in a democracy of money to either sectarian or denominational institutions, and I agree with him that it is a perversion of the entire tax function of government to take money contributed by taxation of all the people and to parcel it out among members of a group, whether corporate or otherwise, who are so grouped solely because of sectarian or denominational affiliation, and that subject to this further modifying thought: How is the grouping to be determined? It is not because the hospital that Judge Gordon speaks of is called the Presbyterian Hospital; that is not the way that judges have determined this question. In the cold impartiality of the neutral judge, it matters not that a hospital is called the

Mercy Hospital and that the nurses who go from bedside to bedside and touch the lips of the dying and give hope to the men or women or children who need hope, that they happen to wear the garb of some religious order. That is not the test that the courts have applied to the question as to what is a sectarian or denominational institution. In the two recent cases determined by the Supreme Court of the United States, in which appropriations were made, in the one instance to an institution at Emmitsburg, in Maryland, and in the other to an institution of learning at Georgetown, where this whole question was discussed and where the determination was by the full bench of the Supreme Court of the United States, these principles were decided, and I am going to take the time and trespass sufficiently upon the patience of the Commission to read them, read extracts from them, in order that the thought here may be clarified, and in order that we may get out of this discussion the entire sectarian and denominational feature of it. The Supreme Court of the United States, in passing on the status of Georgetown College, which, as we all know, is situate in the District of Columbia, expressly decided that religious control exercised over incorporated institutions which are not sectarian institutions under their charters does not make them such; that is to say, the test is, what does the charter say, so far as determining the question as to whether they are sectarian or denominational? The allegation in that case was that Georgetown College was incapable of taking a devise under the Maryland Bill of Rights, which invalidated gifts and devises under the Maryland Bill of Rights to religious institutions unless made at least one month before the death of the donor, because it was under the control and supervision of the Order of Jesuits, and that the college was built as a sectarian institution. The decision in that case is as recent as 200 United States Reports, and was based upon the finding that the college was an educational institution under its charter and not a sectarian or religious institution. The fact upon which the supreme court turned the case, and on which all these cases have been turned, was what did the charter of the institution provide?

Now, in the other case, which was an injunction brought against the Treasurer of the United States to enjoin payment of moneys to a hospital under appropriation by an act of Congress, the allegation was that the appropriation was made to a religious society, thereby violating the constitutional provision which forbids Congress to pass any law respecting an establishment of religion. The allegation was that the Providence Hospital was a sectarian institution, that is to say, a private and eleemosynary corporation, and that to the best of complainant's knowledge and belief it is composed of members of a monastic order or sisterhood of the Roman Catholic church, which is conducted under the auspices of said church, and that the title to its property is vested in the Sisters of Charity of Emmitsburg, Maryland. When the question came before the Supreme Court of the United States for determination, in the opinion written by Mr. Justice Peckam, and it seems to me that, bearing this language in mind, we get entirely out of the realm of sectarian or denominational discussion that part of the discussion here this afternoon has assumed.

"The above-mentioned allegations in the plaintiff's bill do not change the legal character of the corporation, or render it, on that account, a religious or sectarian body.

“Assuming that the hospital is a private eleemosynary corporation, the fact that its members according to the belief of the complainant are members of a monastic order of sisterhood of the Roman Catholic church, and the further fact that the hospital is conducted under the auspices of said church, are wholly immaterial, as is also the allegation as to the title to its property. * * * The facts above stated do not in the least change the legal character of the hospital or make a religious corporation out of a purely secular one, as constituted by the law of its being. Whether the individuals who compose the organization, under its charter, are all Roman Catholics, or Methodists, or Presbyterians, or Universalists, or members of any other religious organization, or of no organization at all, is of not the slightest consequence with reference to the law of its incorporation, nor can the individual belief upon religious matters of the various incorporations be inquired into, nor is it material that the hospital may be conducted under the auspices of the Roman Catholic church. To be conducted under the auspices, is to be conducted under the influence or patronage of that church. The meaning of the allegation is that the church exercises great and perhaps controlling influence over the management of the hospital. It must, however, be managed pursuant to the law of its being. That the influence of any particular church may be powerful over the members of a non-sectarian and secular corporation, incorporated for a certain defined purpose and with clearly stated powers, is surely not sufficient to convert such a corporation into a religious or sectarian body. That fact does not alter the legal character of the corporation, which is incorporated under the act of Congress, and its powers, duties and character are to be solely measured by the charter under which it alone has any legal existence.”

Now, my thought in bringing to the attention of the Commission this pronouncement of the law by the Supreme Court of the United States is with the idea that unless these decisions are apprehended and understood—I have no doubt that even the legal members of this Commission have had no occasion, as I had no occasion, until I came to look carefully into this matter—it is impossible to see the line of demarcation as laid down by the Supreme Court of the United States between institutions that are sectarian and denominational and institutions that are not sectarian and denominational. Therefore, I take it that as applying to those institutions within the decisions of the Supreme Court of the United States, there can be no objection to appropriating money to them, because, if the institutions were conducted as it appears in the decision to which I referred, they were held to be non-sectarian and non-denominational.

Mr. GORDON. Mr. Chairman: Was it not decided in both cases simply that those institutions were not religious institutions, especially the first one?

Mr. SCHAFFER. Mr. Chairman: I think that is so, sir. I think I might just stop to further modify that. The decision was that they were not sectarian or not denominational. The question—

Mr. GORDON. Mr. Chairman: They decided they were not religious institutions.

Mr. SCHAFFER. Mr. Chairman: They decided that they did not contravene the provisions of the act of Congress which provides against appropriations to religious institutions.

Mr. GORDON. Mr. Chairman: I would not differ with that.

Mr. SCHAFFER. Mr. Chairman: They were religiously conducted. They were carried on by members of a particular religious faith. Now, my thought is, and I trespass upon the patience of the Commission, in order that I may advance this thought, that if you read into the Constitution as it is what the courts have said of the term as used in the Constitution, then there is no interdiction against the appropriation of public moneys in aid, not of charity, but in aid of that extraordinary thing there is in human nature which we call charity. From my experience, in the community in which I live, and from my experience in the state at large, with which I have some familiarity, I think it would be a disastrous thing for the state not alone to try to put a damper upon it or to show its lack of interest and appreciation of those people who, of whatever sect or creed they may be, have the inspiration for the charitable deeds that they do in the state, and by reason of the creed according to which they worship; but it would seem to me disastrous to the state, so far as the state's humanity and charities are concerned, if we were to dry up the spring out of which wells this surprising interest in and love for his fellows; that leaves the people of whatever religious denomination to devote a part of their time and some of them so much, indeed, that it is almost all of their time, in caring for the well-being of people who are afflicted. You cannot call that into being; that cannot be called into being in a state institution. It is the fact that there are people who are Dunkards, or Amish, or Mennonites, or Quakers, who gather together for religious purposes, and there in the interchange of thought agree to devote part of their energies, part of their time, to caring for the afflicted or the less fortunate than they that enables these great charitable projects of the state to go forward. It is the fact that because there is some great doctor somewhere, like Dr. Biddle in the anthracite coal fields, the greatest bone surgeon anywhere in the world, or the doctor at Sayre, or the doctor somewhere else out there in the mountains or the hills; it is because he is there, and because he has rare skill, and because the people among whom he lives have faith in him and gather around him, using their churches as a background, that such institutions exist. The people in one church may agree, and all churches in combination may agree, that they will put a part of their efforts forth in order to build an institution where you may take care of our sick and our afflicted and our people who are diseased; but if we say to them that cannot be done, we propose to put an institution out there that the state will run, and that you will have no part in it, we propose that the charities of the state shall proceed from a centrally organized body, solely under state control, it seems to me we will dry up the interest of the people where the great institutions are that are conducted by the state, like the insane asylums, and take away the organization that the people had, to which they contributed something by way of support. Now, what I do think is that taking the Constitution as it is amended, maintaining the language of the section as it is, because that section means what the supreme court has said it means, we should maintain the language as it is so that there will be no point of religious cleavage or sectarian belief concerned when the people come to pass upon the work that we are doing. Taking the thought of Judge Gordon and Mr. Pepper together with the budget system

as we have it and with the authorized State Board of Charities as it exists to-day, or improved upon as it will be in the future, or some other agency created by the state, I believe that appropriations, such as those under discussion, to the educational and charitable institutions of the state can be carried on in such a way so that the burden of the state will not be too great, and on the other hand can be carried on in such a way that the good which will be done is far greater than the good which would be done by a system of charities that has no other existence save as it exists as a department of the state government.

Furthermore, I doubt extremely whether as a practical matter, I doubt extremely whether you could by 1927 build up the institutions of the state to take care of the wards of the state. If all the benefactions to charity are to be done away with, as Judge Gordon suggests, and I think there is a great deal in that thought, the result of this might be that there would be a great uprising of the people throughout the commonwealth in order that their charitable institutions should not be stricken down, and they would more deeply go into their pockets and to a greater extent than now by their contributions to support the charities of the state; but that we do not know. We cannot tell how many of the institutions of the state would be stricken down by such a drastic provision as that; that is, as they are now, if all appropriations to them are to cease. It does seem to me this discussion has taken a wide range this afternoon, but no more important a subject will come before this body. It seems to me along the lines of the suggestions made by Mr. Pepper and along the lines of Judge Gordon's thought, that the policy of the state may be to make closer inquiry and to be more zealous in the way that money is appropriated, that an almost ideal system can be worked out in Pennsylvania, under which we will take advantage of the spirit which prompts these kindly disposed and charitably minded people to aid the state in carrying the great burden which the state is called upon to carry as to its unfortunates. Therefore, if I may make a suggestion, it is this; that the further discussion of this matter be postponed until tomorrow morning, with the request to Mr. Pepper, if he has the time, that he will submit a draft in the morning of what he has in mind, and that he and Judge Gordon and any of the rest of us who may have thoughts on this subject, may get our heads together tonight to see if there is not some common meeting ground whereby a system can be worked out for the state that will be a practical system that will keep this state where it has been for so long in the matter of caring for its unfortunates.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress.

ADJOURNMENT.

Mr. FISHER. Mr. Chairman: I move that the Commission do now adjourn until 10 o'clock tomorrow morning.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 6.05 o'clock P. M., the Commission adjourned until 10 o'clock tomorrow morning.

Senate Chamber,
Wednesday, January 14, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—19.

Alter, Carson, English, Fisher, Fox, Gordon, Kelly, McCormick, Muncie, Pepper, Ferrine, Reed, Smith, Stackpole, Thorpe, Tyson, Voll, Warburton, Schaffer (Chairman).

ABSENT—6.

Connelly, Cuyler, Miller, Pinchot, Sharpless, Sulzberger.

JOURNAL APPROVED.

Mrs. WARBURTON. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Has Committee No. 1 anything to report at this time?

Mr. ALTER. Mr. Chairman: Committee No. 1 has nothing to report.

The CHAIRMAN. Has Committee No. 2 anything to report at this time?

Has Committee No. 3 anything to report at this time?

Mr. THORPE. Mr. Chairman: I do not have a report, but I would like to submit at the proper time a substitute for a pending amendment.

The CHAIRMAN. That may be submitted at any time in the Committee of the Whole, Mr. Thorpe.

Has Committee No. 4 anything to report at this time?

Mr. PEPPER. Mr. Chairman: Committee No. 4 has no report.

The CHAIRMAN. Has Committee No. 5 anything to report?

SPECIAL COMMITTEE.

Mr. ENGLISH. Mr. Chairman: There are several sections of the Constitution in a sort of twilight zone, somewhere between Committees Nos. 3, 4 and 5. It might be well for the sake of the calendar if a sub-committee were formed from the members of those three com-

mittees to find those sections and take some action in regard to them. I, therefore, move that a committee of three be appointed for that purpose.

Mr. PEPPER. Mr. Chairman; I second the motion.

The motion was agreed to.

The CHAIRMAN. The Chair appoints as that committee Messrs. English, Pepper and Thorpe.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, Mr. Alter in the Chair.

ARTICLE III, SECTION 17.

The CHAIRMAN. The Committee will resume the consideration of section 17 of Article III.

On the question recurring.

Will the Committee agree to the amendment?

Mr. THORPE. Mr. Chairman: I would like to submit the following. I submit this on the principle that there is confusion in the proposed amendment by the committee; confusion as to educational and benevolent institutions, and that a large part of the difference of opinion which has developed is due to that confusion; and with that thought in mind I beg to submit this amendment to be considered by the proper committee.

The Secretary read the amendment as follows:

Appropriations for charitable or benevolent purposes may be made to a corporation or association in this commonwealth, not under its control, but engaged in work or service deemed by the general assembly to be for the public good, provided such work or service conforms to such standards of efficiency as may be prescribed by law; but every such appropriation shall be made by a vote of two-thirds of the members elected to each House, and the corporation or association receiving such appropriation shall be subject to inspection by the commonwealth according to law and shall make reports to the general assembly, or to such person or persons as it may designate, of the precise use made of such appropriation.

Mr. THORPE. Mr. Chairman: You will notice that this does not cover all the points under discussion, but covers the particular point eliminating the proposition concerning appropriations to educational institutions, limiting attention to educational, charitable, eleemosynary, and so forth, and I beg to submit it and move that it be considered by the Committee of the Whole.

Mr. STACKPOLE. Mr. Chairman: I second the motion.

On the question.

Will the Committee agree to the motion?

Mr. SCHAFFER. Mr. Chairman: I desire to offer an amendment to the report of Committee No. 1, and the various amendments thereto now pending, as a substitute for them.

The Secretary read the proposed section as follows:

On or before March 1 of each year in which the legislature shall be in regular session the Governor shall submit to the general assembly a budget. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the two fiscal years next ensuing including expenditures for charitable and educational purposes. The Governor shall at the time of presenting the budget to the general assembly submit a bill containing the proposed appropriations for the fiscal years covered by such budget, as well as any bill or bills embodying any recommendation as he may desire to make as to sources of revenue.

Immediately upon receipt of the Governor's budget the presiding officer of the House of Representatives shall introduce into such House the said appropriation bill, and also all bills relating to sources of revenue submitted by the Governor or shall have been submitted to the general assembly.

The general assembly shall have power to increase, decrease, strike out or otherwise alter any item in the appropriation bill, or add other items thereto. Until the appropriation bill shall have been finally acted upon by both Houses of the general assembly, neither House shall consider any appropriation measure, unless the same shall be for the immediate needs of the general assembly or shall have been submitted to the general assembly by the Governor with the request that it be acted upon in advance of the appropriation bill.

No appropriation shall be made to any charitable or educational institution not under the absolute control of the commonwealth which did not receive an appropriation from the commonwealth in the year nineteen hundred and nineteen, nor to any charitable or educational institution unless it shall in the service rendered by it conform to such standards as may be prescribed by general law or by an executive agency established by general law.

No appropriation except for pensions or gratuities for military service shall be made for charitable, educational or benevolent purposes to any person or community, nor to any denominational or sectarian institution, corporation or association; but this prohibition shall not affect appropriations for the retirement of judges or of employees of the state or of state institutions, or of the public school system.

Mr. SCHAFFER. Mr. Chairman: I move this as a substitute for the report of the committee and for all pending amendments.

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

APPROPRIATIONS TO CHARITABLE AND EDUCATIONAL INSTITUTIONS.

Mr. SCHAFFER. Mr. Chairman: The substitute, as I have proposed it, amends the budget as the budget has already been passed, adding to it certain provisions, substituting that as section 15 for the present section 15 and sections 17 and 18 of the Constitution. It seems to me the discussion yesterday demonstrated this outstanding thought, that there is at present in the minds of a good many of the members of the Commission the fear that the charitable appropriations by the state will grow to proportions that will be a menace to the state, not only in the proper conduct of legislation, but in the granting of the state's revenue; so that I have embodied in the substitute as I have drafted it a provision that would limit all of the charitable institutions not under state control to those that exist, or according to my substitute, those receiving appropriations in 1919. I take for granted that that will be changed to a later date to more nearly conform to the adoption of the Constitution. That is a matter for the committee on style ultimately to work out.

Now in connection with the budget and in connection with the charitable institution appropriations, it is to be borne in mind that our present Constitution provides that no bill making an appropriation, such as those in controversy, can be passed except by a vote of two-thirds of all the members elected to each House. On consideration of that, it seems to me that if all the charitable appropriations are to go into the budget a two-thirds provision could be very well eliminated, because the Governor, before sending in the budget, would have considered what institutions ought to be recommended for charitable appropriations, and the amount of the appropriations in the light of the revenues of the state. Therefore, the two-thirds provision could be eliminated and a majority vote could pass such appropriations, because they would be in the budget measure. If the two-

thirds provision is retained, then the result will be that unless you separate the charitable appropriations entirely from the budget, the result will be that it will take a two-thirds vote in both branches of the assembly to pass what is now the general appropriation bill. In order that the state may function, and that the state activities may be carried on, it seems to me that it would be very dangerous to put into the fixed form of the Constitution that the appropriations for the conduct of the business of the state could be held up by a minority of one-third of either House of the legislature. I recall one time of being here when that was contemplated by a minority, and it was realized that there would be an absolute suspending of the functions and activities of the state which led those gentlemen who were considering the action to abandon it. I left out the provision of section 17, that part of section 17 which related to the appropriation to normal schools, it being my opinion that all of the normal schools are now owned by the state, or that they are about to be acquired, so that there will be no normal schools not under state control. So that can come out. I have retained the wording of the Constitution, except as to appropriations being made to denominational and sectarian institutions, and have inserted a provision that makes certain the right of the general assembly to provide for pensions to judges, employes of the state and of state institutions, and to the employes of the public school system, so that those appropriations will be put beyond controversy. Now, the particular proposition that we discussed yesterday, I have endeavored to change so that the thought may be suggested to the Commission by the provision that there shall be no appropriations of the kind contemplated made to any institutions after 1919, that is, any institution not receiving state aid in 1919 shall not be permitted to receive state aid thereafter. In that way one of the evils about which Mr. McCormick spoke and which is one that is very likely to arise, will be taken care of, that is to say, there will be no new hospitals started in communities. I happen to know myself that occasionally there will be differences arise between doctors in an institution, and one set of doctors will break away from the institution and want to organize a new hospital. That ought not to be permitted, because in the future the activities of every one should be directed towards the improvement and upbuilding of the various hospitals in the communities as they now exist. My method is only by way of suggestion to bring the thought before the Committee so that it may have in mind the question as to whether many of the difficulties that appear in view when we come to consider the future of this matter of state appropriations and so-called private charities, whether many of them will not disappear if the private charities, so called, are held where they are now. I have had called to my attention within a few days a report of the commission in New York that is inquiring into the general subject of the public affairs of the state of New York. Their attention has been drawn to this matter in New York, and the report of that commission was that unless there was some method devised for stopping the great outlay that the state was being called upon to make to the institutions not strictly under its control and for purposes not strictly state purposes, that the revenues of New York would not be adequate to meet the real demand that was being made upon the state for functions that were purely state functions. I can

quite well conceive that if there is not a stop, some time fixed beyond which appropriations shall not be made for institutions not strictly under state control, they may grow just like a rolling snow-ball, as it has grown with the growth of the commonwealth; but if it appears in the judgment of the Commission that the only solution, and only possible solution, that might meet all of the difficulties in view would be arrived at by stopping where we are, and letting the institutions that now exist be built up with the idea of continued state aid, I think that it will likely occur, as Judge Gordon suggested yesterday, that these institutions being maintained without rivals will, in many communities at least, receive from everybody charitably inclined in that particular direction, and will receive from people of wealth, bequests and donations that will ultimately make them independent of state assistance. As that time comes along the institutions receiving state aid will be fewer and fewer and ultimately it may be that the entire system will be ended.

Mr. PEPPER. Mr. Chairman: If I correctly understand the parliamentary situation it is this: Committee No. 1 reported without recommendations a certain substitute for two sections now in the Constitution. When that was ready for consideration, Judge Gordon proposed by way of amendment a resolution that was under consideration yesterday. I understand that the Attorney General now introduces a resolution which is in effect a substitute both for the report of the committee and for Judge Gordon's amendment. Am I right in understanding that? Introduced, as a substitute for the amendment by Judge Gordon; and it amounts to a substitute for the section as reported by the committee also?

The CHAIRMAN. Introduced as a substitute for the amendment by Judge Gordon, but it amounts to a substitute for the section reported by the committee also.

Mr. PEPPER. Mr. Chairman: It seems to me that the Attorney General is clearing the way by what he proposed, but I venture to hope that when we finally take action on this matter we shall face and squarely decide the fundamental question of principle, whether or not the state should make grants of money for either charitable or educational purposes to institutions not controlled by the state. I find it difficult to acquiesce in the thought expressed by Mr. Schaffer, when he suggests the limitation of future grants to institutions which may have received grants in any particular year. That does not seem to me to be the proper and sound way of dealing with a great subject. If Judge Gordon and Mr. McCormick and others who have spoken on that side of the question are right, then it seems to me that the logic of the situation requires that we should declare against the proposition of making these appropriations, and set some time limit when the practice is to be suspended. On the other hand, if the proposal is voted down, it seems to me that it must be upon the theory that the method pursued in England, for instance, as it has been pursued in Pennsylvania, is the right one; namely, to supplement state-owned and state-controlled charitable and educational institutions by grant to institutions privately owned and privately controlled. If that is the right principle (I am not at the moment discussing the question), but if that is the right principle, is not there something mechanical and, if I may say so, unworthy in undertaking to crystalize the situation by binding the hands of the legislature

and the Governor in the future in administering a principle which by supposition would have previously been decided to be sound? It does seem to me to be an effective way to set a limit to appropriations, by designating the institutions which in any particular year may have received appropriations. They are so numerous and their wants so great, and in many instances are likely to increase, that the revenues of the state might be seriously drained by increasing the size of the appropriations to existing beneficiaries just as well as by keeping them at a fixed point and increasing the number of beneficiaries. It seems to me that the question as to whether a new applicant for a grant is entitled to it, is a question which ought to be taken into consideration and acted upon by whatever agency is created under the law for that purpose, and its recommendation, favorable or adverse, acted upon by the Governor and the legislature under the budget. So that it seems to me that the substitute proposed by Mr. Schaffer will probably, upon analysis, be found undesirable. I do hope that we shall not evade a decision sooner or later on the great fundamental question, and if we decide that grants to associations of the kind that we have been considering here are sound in principle, that we shall not do what seems to me to be the unsound thing of crystalizing those who may receive such grants by determining that in future nobody shall receive them except those that may have received them in a particular year. I very much hope that this question will not be finally decided today. I think there is an informal understanding amongst the members of the Commission that it shall not come to a vote in the absence of some who wish to be heard upon it. I very much hope that in the interim it will be considered by Mr. Schaffer as to whether there is not some effective way, and a way that is sounder in principle, of dealing with the great fundamental question than by this system of arbitrarily determining it at a particular time.

Mr. SCHAFFER. Mr. Chairman: Mr. Pepper's suggestion gives rise to this thought in my mind as to whether the substitute that I have suggested may not be broadened, and also to give the members of the Commission an opportunity to think about it between now and the time it will come to a vote; whether it could not be broadened and the threatened or anticipated evils of appropriations of this kind, both in money and in the character of the institutions receiving the appropriations, be overcome. At the same time there will be no arbitrary clamping down on a situation that could be relieved, if it were necessary to be relieved, by incorporating in the substitute some provision such as this, that is to say, they should not receive state appropriations unless they had received appropriations in the year 1919, or unless prior to the building or the creation of the institution its creation had been approved by the Governor, the Auditor General and the State Treasurer. In that way, then, there could not be built or created in any part of the state any institution with the expectation of receiving state aid, unless the two fiscal officers of the state and the Governor—I merely suggest them; it may be that the State Board of Charities or some other body created by law is the proper body to pass upon it, but that is a matter of detail—had sanctioned the creation of the institution. In that way the situation would be more sound and more flexible. That I offer as a suggestion for the thought of the members of the Commission.

Mr. KELLY. Mr. Chairman: I am not sure that I heard distinctly everything that was read by the Attorney General in his substitute provision. I think, however, it is provided in that that no appropriation could be made hereafter to charitable or denominational institutions of a sectarian or denominational character. Now, I assume, and I wish the Attorney General would inform me as to whether my assumption is correct, that he had in mind sectarian or denominational institutions in the sense that he spoke of yesterday at the time that he quoted from the opinion of the Supreme Court of the United States.

Mr. SCHAFFER. Mr. Chairman: It was thought we could safely leave the interpretation to the court in the light of the decisions as they are, because the case in which I have just been concerned has not been pressed any further, and I think it must be conceded, therefore, that the institutions challenged are not sectarian or denominational. That is, the institutions now existing.

Mr. KELLY. Mr. Chairman: I assume that is what you had in mind in presenting your constitutional provision. I am not sure, however, that this Commission should not clarify the situation with reference to sectarianism and denominationalism. In other words, the work of this Commission, if it is finally submitted to the voters, will be adopted or rejected. If the changes in the Constitution recommended by us should be adopted by the people and should become part of the fundamental law of the state, and the question of interpretation should come up, the courts would, I think, say in any instance that the language of the constitutional provision which is under consideration shall not be considered from any technical standpoint or technical meaning, but that the words used by the framers of the Constitution shall be taken in their popular sense, and the courts might hold that an institution which is organized and carried on by a so-called sectarian order or body, whatever it might be, is sectarian in the sense that the word is used in the Constitution, and it would not be entitled to any appropriation. That is not what we mean by the language, and the language which we propose to put into this Constitution. I think it has been held that even the debate which took place in the constitutional convention was of little, if any, benefit in aiding the court in construing constitutional provisions, because, say the courts, it is not what those who debated the subject might have thought. There may have been a great many members of the constitutional convention who did not take part in the debate. We do not know what was in their minds, and even if we did that would not help us. The real question is what the amendment indicated to the voter who read the provision before he voted "aye" or "no." I think this Commission should be somewhat more clear in the use of the language. In other words, if a majority of this Commission is of the opinion that an institution, if you please, organized by a religious denomination for charitable purposes, assuming always now that the benefits, so far as the benefits are concerned, that there shall be no denominational or sectarian test, if this Commission thinks that it is improper that such an institution should receive any appropriations from the state, let it be so stated, so that there will be no ambiguity about the language. If, on the other hand, it should be the sense of this Commission that it would be a proper thing, and a thing which should not be discontinued,

that worthy charitable institutions which extend their charities to all classes, regardless of their religion or their beliefs, why then let us have the language so plain that there will be no question about that. I, therefore, think that it would hardly be proper, if this question should go before the voters of the state in such shape that there should be any chance for argument after the Constitution which is proposed to be formulated shall be adopted, if it is. I am not making any argument; this is more in the way of a suggestion. I find that the language of the recommendations in the report of the committee was rather apt, because it did not use the word denominational or sectarian, but it did make it very plain that appropriations might be made by the legislature, if the legislature saw fit, in any given instance, to an institution that was engaged in the public good, to an institution, if you please, that is performing the work of the state to a greater or lesser extent. Now, unless this language is made so clear that there shall be no ambiguity about it, this question, which is a rather important one, a very important one, a question which attracts a great deal of attention, and which, as my friend, Judge Gordon, says, always contains more or less combustible material, will always be before the people. Let us settle this question if we can. Let us settle it subject to the adoption or rejection by the people at any rate. Let us settle it so that hereafter the guideposts will be so plain that there will be no chance for any one, legislators, the members of the House or Senate, Governor, or anybody else, to go wrong on it. I am rather opposed to the use of the words "sectarian" and "denominational." That is, I am opposed to their use in the light of the meaning which the Attorney General puts upon them, because I think there is at least a possibility, if not a probability, that, if the question ever should come to a test in the courts, it might be held that they meant more than he thinks they may mean or ought to mean in the substitute provision which he has suggested.

Mr. McCORMICK. Mr. Chairman: As I understand, the suggestion of our Chairman was that all amendments on this subject be submitted at this time, so that the entire subject can be laid before the Committee of the Whole. I would like to offer the following amendment or substitution, and it is offered upon the supposition that a budget clause is to be inserted in the constitution:

"Section 17. On and after the year one thousand nine hundred and thirty-one, no appropriation shall be made to any charitable or educational institution not under the absolute control of the commonwealth.

"The general assembly may provide for the compensation of corporations or associations not under the absolute control of the commonwealth for actual services rendered by them in the care, relief or treatment of such dependent persons; provided, that such compensation shall be payable at equal and uniform rates and upon equal and uniform conditions to all corporations or associations of the same class, as defined by general law, whose work or service conforms to conditions and to standards of excellence prescribed by general law or by an executive agency authorized by law.

"Provided further, that compensation of any corporation or association for the fiscal year following the adoption of this Constitution shall not exceed sixty per centum of the actual cost of service ren-

dered to such dependents by such corporation or association; and provided further, that for each succeeding biennium the ratio of such compensation to the cost of service to such dependents shall be reduced by ten per centum, until the fiscal year one thousand nine hundred and thirty-one, after which no compensation or appropriation for charitable or benevolent purposes shall be paid to any corporation or association not under the absolute control of the commonwealth.

"Section 18. To remain as in present Constitution."

You will notice that this is an amendment generally to the amendment offered by Judge Gordon, simply embodying a new method of distribution.

Mr. GORDON. Mr. Chairman: I was going to say I will accept, when the time comes, this substitute for my amendment.

Mr. McCORMICK. Mr. Chairman: I want to say further that I was very glad indeed to hear the proposed amendment by Attorney General Schaffer, but it seems to me in listening to the debate of yesterday and this morning, which debate I asked for last Thursday for enlightenment, so far it is the strongest presented, notwithstanding the very strong and forceful argument submitted by Judge Gordon, strong arguments in favor of adopting the principle of state control only. It is a recognition that the present system is an evil, that it exists, that it must be stopped, and that after 1919 it shall not be continued. If it is right, then it is fair that every citizen and every body of citizens in the state of Pennsylvania have the same right as those citizens who accidentally created their organization before 1919. It seems to me that this opens up the entire question, and I am very, very glad that the amendment was offered this morning, because I hope it will bring out what I hoped for yesterday, a discussion by these learned counselors and lawyers upon the great constitutional question and the fundamental principle as to whether this commonwealth has the right to turn over the taxpayers' money into the hands of private corporations or individuals to spend. The suggestion which Judge Gordon made yesterday, seconded by Mrs. Miller, on the floor here, I fail to hear on the other side, one argument upon the principle involved in this great question. We heard of the disasters that come to these institutions; we heard about the weaknesses of human nature, and we cannot correct it by statutes; we heard about cutting off the taproot of charity in this state; we heard how state government was not competent or able to carry on any great work, and that you would create a great machine; but I failed to hear, I might not have recognized it, but I failed to hear one argument along the line of special legislation and the real purpose and object of a situation such as this, upon those great fundamental principles except the argument that was presented by Judge Gordon, which has not been answered as yet. Gentlemen, we cannot beg this question. Every amendment and every proposal that has been brought up here before us has been temporizing and camouflage. As Mr. Pepper said this morning, the principle still remains to be discussed and to be determined, and that is the principle that ultimately is to go before the people of the commonwealth. I do not know of any group of men better able to discuss that than these men sitting here, these learned attorneys and men who have had experience in legislative matters. It is on that line, it seems to me, that we must decide this question. Does the Attorney General

realize what this means practically, this proposal, to limit the number of charitable institutions to those now existing? Does he know that there are seventeen counties that do not receive a dollar of state appropriation for the support of their private charitable agencies? The residents of those counties, numbering more than half a million, in order to receive the benefits of the state, must travel from thirty-five to one hundred miles from their homes, without the possible assurance even then that they will find accommodation. Compared, then, with the advantages open to residents of counties otherwise similarly situated, receiving state aid, these residents of the state, who are assumed to contribute their quota to the state funds, are denied an equal participation in the bounty. I read the figures as submitted by the Pennsylvania Charities Association. Does he realize that in one county the state aid to private charitable institutions, in a recent year, equaled more than sixteen hundred dollars for every thousand of inhabitants? And in other counties it was eighty-nine dollars for every thousand of population; eighty-nine against sixteen hundred dollars. In one county the state appropriation amounted to five hundred dollars and thirty-one cents for every one thousand dollars per capita wealth in the county. In another county of almost equal size and population and of very similar character, the state aid amounted to only thirty-one cents for every one thousand dollars of per capita wealth, thirty-one cents against five hundred dollars and thirty-one cents. The per capita wealth of the two counties was almost exactly the same, indicating about equal use of charitable facilities. Does he realize that the appropriations range all the way from twenty-five dollars to six hundred and twenty-five dollars a bed? Tremendous inequality! There cannot be much under this new system of limiting and cutting down the appropriation. What about the twenty-five per cent of the counties in Pennsylvania, seventeen counties? Are they to be absolutely cut off from any participation under this system? These discrepancies must be equalized, that is the theory of the lump sum, and the mere adoption of this budget, in my opinion, is going to create a storm over the state, because it will emphasize the inequality, and emphasize special legislation. I merely wanted to call these facts to the attention of the members of the Commission because I understand that this discussion is not now to be an extended one, but it was to be postponed until we have a full meeting of the Commission; but I wanted them to think over these problems, and I hope when it is next brought up for discussion we may hear from these learned gentlemen arguments based upon the theory of the situation; what the Constitution should stand for, and what our endeavor should be to put in it. Do not let us have our vision blurred by looking through the windows of some excellent charitable institution. They are performing a great work in this commonwealth, but let us look upon the fundamental question to be determined in this commonwealth in this new situation that we are about to create.

Mr. SCHAFFER. Mr. Chairman: In answer to Mr. McCormick's inquiry, it seems to me that we are not solving the question here of what the people are to determine. The people can determine anything as fundamental law. We are solving the question of what propositions shall be submitted to the people. The people in the adoption of the Constitution are omnipotent themselves in the sense, of course, only that they can, after a particular proposition is submitted to

them, adopt or reject it. I believe that if we submit to the people a proposition that every charity in the state shall be aided by the state and the people adopt it by a majority vote, that is the fundamental law. The people thereby put their sanction upon it as a proper expenditure of state funds. It can only be done, of course, with their vote, so that as we are framing a Constitution to be ultimately submitted to them, one of the vital questions is what kind of a Constitution will the people adopt? Will the people adopt a Constitution which strikes down all of the charities in the state so far as they are receiving state aid, so far as many of them are concerned, closing them up entirely; will they adopt such a Constitution, is a question for the exercise of the best judgment that we can give to it. I do not know what they would do, but it is my opinion that a Constitution which strikes down all of the charities in the state except those that the state controls will have a very serious opposition, because the mass of the people, as I view their judgment, think that it is right that the state should aid various charities that are not self-supporting, and that are a part of the state's duties in a charitable sense. I also think that to point out that seventeen counties do not receive any of the charitable appropriations of the state does not exactly state the proposition as it is. I imagine that there are no hospitals, I do not know, but I do not recall that there are any hospitals in Perry or possibly Juniata; I do not remember whether there are any in Cumberland; I am speaking of the territory right around here; but all that territory is tributary to the hospitals of Harrisburg, just as all or the very large part of the territory in the northern tier is tributary to the hospital in Sayre; and just as there is a very large territory surrounding Indiana county that is tributary to the hospitals in Indiana; just as it was in my community up until twenty years ago, when we had no hospitals at all, and our people who required hospital treatment went to Philadelphia in order that they might get into a hospital: so that I think it may be said as a broad proposition that the state's benefactions in this respect reach every corner of the commonwealth. The fact that money does not go into a particular county does not mean that the people of that particular county receive no benefit from the state's benevolence. So that it seems to me that answering the two propositions that Mr. McCormick suggests, it is useless for us to adopt provisions in the Constitution to be submitted to the people that the people will not themselves vote for. We must consider here the final thought as to whether or not the language which we put into the Constitution is that language which they are going to approve. It is not, it seems to me, what any one of us would do, or what the whole twenty-five of us would do, as to any measure; what is ideally perfect from our point of view is not the proposition that we are called upon to determine, because anything that we might think ideally perfect might meet with such a tornado of opposition at the polls as would wreck the whole constitutional program. Our proposition, as I see it, is to first pass to the legislature, because that is where we first pass it on, such a Constitution as we think harmonizes with the general thought of the state, with the idea that in that Constitution there are improvements over the Constitution as it now is. While I am on my feet, if I might just say a word in response to what has been so very well said by Judge Kelly, my thought was, and my thought

still is, that just as Judge Gordon said, and just as Judge Kelly said, there may be great combustibility in the section which provides against appropriations to sectarian and denominational institutions; but my thought as to that would be that the ultimate and final construction of the courts would be that the constitution-makers, both here and in the constitutional convention, if it shall be called, and ultimately the people themselves, speaking on that question, would speak with the terms as defined by the courts, and that if the language is left in that shape, and if that is the construction that we can fairly prognosticate the courts would make, then as to all of the institutions doing a worthy work in the state, that would be permitted, as I understand the decisions that have already been made. Of course, if the courts should shift on the construction of the words, then many of them would be in peril. It is with that thought in mind that I believe it would be the safer proposition to leave the language of the Constitution as it is, so that when you go to the people and argue the question as to whether or not they should adopt the Constitution, you will be able to say to them that that question does not enter into the debate, and that whether they adopt or reject the Constitution which we recommend, the language of this provision will be the same. That question, which would be a calamity if it should arise in this state, would be taken entirely out of the line of debate.

Mr. PEPPER. Mr. Chairman: It seems to me that it is better to express ourselves informally, as this is less a debate than a conference, and I fancy we are more likely to get our minds together by such a procedure than if we adhere more strictly to formal methods. It occurs to me that what was said here this morning is very valuable on the subject of appropriations to sectarian institutions. I seem to see a way in which ultimately we may reach an agreement on this subject. I think that when you turn to the original recommendation of the committee you will find that it is proposed to amend the language of the Constitution as it now stands, and as it has been quoted by the Attorney General, by making the test whether or not an institution was entitled to receive an appropriation depend upon whether an institution was sectarian or whether denominational instruction was given therein. That seems to me to be the wrong test, and I ventured to submit the resolution, which was afterwards reported by the committee without recommendation to make the test, not the giving of denominational instruction, but limiting the benefits of the service to those of a particular denomination, or who might answer to some sectarian test. Now, Dr. Thorpe has called our attention to the fact that some of our trouble has been due to the circumstance that we have not distinguished between educational institutions on the one hand and charitable and benevolent institutions on the other. For the consideration of the Committee, I wish to suggest that we think over between now and the next time this matter comes up for debate this point, whether or not the test of what is objectionable sectarianism can be differentiated in the case of educational institutions from the test of objectionable sectarianism in the case of benevolent and charitable institutions. May it not be that the reconciliation of this problem lies along this line; namely, that the legislature ought not to appropriate money to any educational institutions in which denominational or sectarian instruction is given, because if it were to do so it would be in effect subsidizing one

form of religion or one ecclesiastical establishment among many; and that the test whether or not an appropriation may properly be made to a benevolent or charitable institution which does not give instruction, is whether the benefits from the administration of the charity are of general application or are subject to sectarian limits. The difficulty with the existing language of the Constitution has been clearly pointed out by Judge Kelly. There is great force in what Attorney General Schaffer says to the effect that we should perpetuate that language and so answer criticism by saying that whatever it means now it is going to mean the same in the future as it has in the past. But I do not think that we shall be making a worthy contribution to the decision of the great question if we merely perpetuate ambiguity, and, as I say, I suggest for the consideration of the Commission the thought that perhaps the reconciliation of the conflicting views lies in distinguishing the test to be applied in the case of educational institutions from the test to be applied in other cases where the use is not educational but is charitable or benevolent.

Then coming once more to the fundamental question of principle which we must all think over before our next conference, it seems to me that Mr. McCormick is a little in the position of the man who says he is open to conviction, but he would like to see the man who can convince him. Mr. McCormick recognizes as arguments only those suggestions which support the conclusion to which he is definitely committed. Now, the conclusion to which he is definitely committed, strange as it may seem, if one studies political ancestry, is that the right way of governing a great empire state like Pennsylvania is to do it centrally through a bureau system controlling even charitable and benevolent enterprises by an elaborate piece of statewide machinery, as distinguished from the method of local home rule, with only such control as is necessary to insure the right application and proper accountability for the people's money. Now, speaking for myself, I have not thought that it was wise to take the time of the Commission to discuss that great fundamental issue upon which minds have always differed, and always will, because my observation is that nobody is ever converted by such discussion. If you are of opinion that you can frame a great state system of charities, that you can carry into effect a tremendous statewide organization, which will effectually care for all those who ought to receive state aid, then you will be on one side of this question. If you believe, as I do, that the system of co-operation between the state and groups of people who under the spur of private initiative, whatever their motive may be, are actually rendering public service in their community, is the right system, that this great unpaid army of volunteers are assets to the state, that the things that they are doing, if properly supervised and made the proper subject of report, are things that ought to be encouraged and not discouraged—then the question is not whether they are acting from charitable motives, or from less worthy ones; the question is whether, on the whole, their activity is a good thing to encourage in the community, whether, on the whole, you will get better results if you establish a working relationship between these groups and your central government, or whether you do it better by abolishing them altogether. So far as the state is concerned, to use all its money and put forth all its activities in the care of dependents in its own institutions centrally controlled, gives

rise to serious problems because we must not forget that the instant you convert your charitable institutions in the state into a system of centrally controlled charitable administration, you introduce the element of political preference in appointments in every institution that is within the limits of the system at the present time. That feature is not an evil among the institutions which are thus locally active and centrally supported. I fancy that when the members of the Commission study the figures that the Board of Charities submits to us we shall find that a very large number of these institutions get the major part of their subsistence from the state. I believe it is true that in no case is money paid to any institution in excess of compensation for the free service that it gives, but in many institutions the cost of the free service is very much greater than the cost of maintaining those departments in institutions where the service is paid for. If it is true that these institutions are for the most part supported by state grant, we shall have to consider whether or not the withdrawal of that support is going to necessitate the taking over of the institutions by the state lest those who are now being cared for by it freely will then be without the means of care. It is a very great and serious financial question as well as one of state administration, whether we are going to involve the commonwealth, with its vast area and teeming population, in the enterprise of itself creating and supporting or taking over and supporting all the charitable and benevolent institutions necessary or required to render public service to the poor and the dependent. When Mr. McCormick says that he has not heard an argument against the suggestion made by Judge Gordon's amendment and his own addition thereto, his ears must be closed to the statement of the situation, which is the strongest argument against this experiment, based, as I believe, not upon anything unsound in the principle of central grants to local institutions, but provoked by an evil system of administration of that principle which it is entirely within the competence of the people to correct. I entirely agree with Mr. McCormick and the others who have spoken that we ought to decide the fundamental principle. For that reason I venture to oppose the suggestion of the Attorney General about crystalizing the group of beneficiaries into those who have received appropriations in a certain year. I am not influenced any more than the Attorney General was by the mere accident that seventeen counties did not figure in the appropriations in any particular year. I am influenced by the fact that if you had adopted some arbitrary method of crystalizing the situation, you deprive the Governor and the legislature of any agency which hereafter is charged with the duties of acting for the state in the premises of the necessary discretion of administering charitable interests throughout the state. Things will change, conditions will change, in the future as in the past. Somebody told us yesterday of a very excellent institution, which received no grant in an intervening year, and subsequently a grant larger in amount than the previous one to make up for the preceding oversight. How unfortunate it would be if that were a worthy institution doing good work, if it happened to be overlooked in the year which was taken as the standard year. It will not do it seems to me, to tie the hands of our administrative authorities in the future if the principle at stake is sound. I beg the members of the Commission in considering the

whole subject between now and next week to focus upon the question of working out a sound method of relating local activity to central control instead of adopting the dangerous, expensive and wholly undesirable method of dealing with the care of dependents and poor and sick through a great political organization heading up in the capital city. It will not work nationally. It has been tried, and it is failing. It will not work in the state of Pennsylvania, where it will be a failure if it is tried.

Mr. CARSON. Mr. Chairman: I acquiesce very readily in the suggestion which has been made on the floor that in this Committee of the Whole we shall consider ourselves simply as if conversationally engaged in friendly discussion with each other around a committee table. The great advantage of a small body like this is that questions can be discussed without that embarrassing line-up, so to speak, on the opposite side of the proposition supported by some sort of partisan heat and there perhaps expending itself in language more or less strained and extravagant. Now, I recall that in that delightful novel of Cranford—it is certainly one of the most happy delineations of traits in human nature which shine all through British literature—that the heroine of the book, Miss Matty, encountered the misfortune of losing her fortune. She said to her old maidservant, “Now, Martha, I am exceedingly sorry, but I have lost my fortune and you and I must part company. You have been a faithful servant. I appreciate what you have done, but I can no longer afford to keep you.” Drawing herself up in great dignity, Martha said, “Miss Matty, you befriended me in my childhood; you have taken care of me up to the present time. Do you think that I would be an ingrate and desert you in the hour of your distress?” And Miss Matty said, “Now Martha, listen to reason.” And Martha goes into the air and said, “I’ll not listen to reason. Because when you say, listen to reason, it always means dropping my own view and taking somebody else’s.” Now, that is exactly where we are. We each want the other to listen to reason, and yet at the same time we are unwilling perhaps to drop our own personal views.

Now, I will not discuss this matter. I do not think that we are arguing an academic proposition. The construction of this Constitution is not to be so squared that in all respects it is exactly measured by strict logic. I will grant you that as a general principle it is correct to say that no part of the public’s money or taxpayers’ money shall be appropriated to private enterprises as a general proposition. That goes without challenge. There is a mysterious and cabalistic charm about the phrase “the people’s money to be devoted only to the people’s business.” That is true, but I wish to call attention to the circumstances, the Attorney General expresses the same thought, that we are engaged in framing an instrument that is to be for the practical government of this great commonwealth, containing nearly nine million people, in sixty-seven different counties, including farming, minerals, agriculture, mining, industries, and so on; we must give them something which will prove to be a workable instrument. Now, we cannot ignore the past. If there is one thing, it seems to me, that we ought to do it is to see historically how we got into the present situation. Now, we are attempting to adapt, we will adapt, the existing instrument to present needs. We are not engaged in attempting to create a wholly new

instrument, which, according to the political complexion of the present time, is to be beyond criticism. Not at all. We are taking the experience of the Anglo-Saxon race as embodied in the Bill of Rights, largely in the language of Lord Somers, coming out of the agony of the English Revolution, and put into the forefront of the Constitution of 1776; and then we have added to that the Constitution of 1790 and the one of 1838, the one amendment of 1851, and the Constitution of 1873 with its amendments. We cannot tear out of these fundamental rights and principles which are there in order to adopt some structure which, according to modern architecture, would be without a flaw. Now, instead of saying we take the people's money and appropriate it to private purposes—What is the history? The state has taken private institutions in aid of its own active administration. That is what it has done. We have taken the organizations of private hospitals as they were organized years and years ago and have asked them to help the state to take care of its numerous multiplied suffering and misery and lack of development which grow in our midst, incident to a fast-growing population. That is what we have done. Crowded conditions of human society and industrial conditions in our state with dangerous machinery cause numerous accidents and mishaps along the highways of life. If an accident occurs on a crowded street of Pennsylvania or the poor wretch is hit by a brick from a roof or wall, does anybody stop to ask who he is, what his religion is, or what his sect is, or what his denomination is, or to what school he belongs? Oh, no. They carry him to the nearest hospital and there he is put to bed and the surgeons and nurses take care of him and they ask no questions at all. They do not care whether it is a state institution, or a private institution, or an institution which gets state aid. Why, there are institutions, that are private institutions, to which no state aid has ever been extended, and yet the state, through the appliance of the collateral inheritance tax, is taking off five per cent of legacies to private charities to foster its own institutions. Now, we cannot ignore this thing. We have availed ourselves of the institutions which private charities have built up into strong, active agencies for human benevolence, and they say when they come to the legislature, as they have done in the past, "The burdens under which we stagger are greater than we can bear; we need a little help." And the state has been ready to aid them. Now, to change instantly that historic situation and to cut off from institutions which rely largely upon this aid is an unfortunate situation. The use of the word "taproot" seems to be exciting the criticisms of gentlemen on the other side. You cannot deprive a plant of its normal amount of moisture and sunlight at the present time if the conditions of its growth are such that it has adjusted itself to certain conditions; you cannot deprive it in the slightest degree suddenly without peril to the life of the plant; and if it is one of those useful plants that sustains human life and enters into the aliment of society, you cannot tear it out simply because you want to be logical, and carry out the phrase, "the people's money" should be expended solely by the state government. I insist again that we are here for the purpose of putting up before the people some sort of instrument which will be a workable instrument. The Constitution of 1787 had to deal with the question of slavery; and yet that great apostle of liberty, Thomas Jefferson,

declared that all men were created free and equal. And yet the framers had to recognize the existence of slavery. And so it was that even the slave-trade was tolerated until the year 1808. We are not here for the purpose of trying to formulate a perfectly logical instrument, which will carry out to a nicety certain fundamental principles of democracy. Therefore it is that this historical side of the situation appeals strongly to me. We cannot tear out existing conditions and substitute new ones and say that we are giving the people a satisfactory and practical form of government.

Mr. FISHER. Mr. Chairman: I have refrained from making any utterance in this discussion, but inasmuch as it has resolved itself into a very general discussion, may I presume to say a word? I am the president of one of those unfortunate institutions known as a hospital, and was a member of the Senate for eight years, during which time I served on the appropriation committee. I was a member of a commission appointed by joint resolution of the legislature to visit, examine and report on proposed legislation covering the subject of charitable appropriations and administration. Furthermore, I am also a lawyer, and who, on account of my connection with my home institution, was obliged to come to this legislature after I ceased to be a member to ask for appropriations. We have heard something about log-rolling in the legislature, and I was a legislator. We have heard something about the vanity that inspires these presumed works of charity, and I am president of a hospital. We have heard a great many things that are intended to throw aspersions on the charitable work of the state. I was surprised to hear an almost wholesale condemnation of the charitable system of the state as a work of evil. Are we approaching the subject in that spirit? Are the hospitals, these eleemosnary institutions that have been built up by the hands and the good hearts of the people of this commonwealth, and scattered broadcast over Pennsylvania, to be condemned as works of evil? I shall not allow that imputation to be cast upon the charitable work of Pennsylvania that has been going on for more than a century. We should not approach it in that attitude. It is not an evil work; it is a good work that you are attacking.

Much has been said about the principle involved. Are we going to waste our discussion over an abstract principle, in the face of the fact that nearly three hundred of these institutions are administering to a suffering people, to the poor people of this great industrial commonwealth? Much has been said of the money that is expended, and the extravagance. Is this so? We will assume that it is so. Are we going to devote our energies to the protection of the dirty dollar when suffering human being's lives are at stake? Do we want to approach it in that spirit? Certainly not. That there is need of corrective legislation, must be evident to everyone who has studied the subject. The remedies suggested here have run the gamut all the way from a blow which will destroy nearly every charitable institution in the state through to gradual suppression, gradual strangulation, and then to regulation of administration, and finally to limitation upon the growth of the charitable work of the state. Now, what principle obliges us to limit the aid given by our legislature and state government to charitable work to those institutions which are not controlled absolutely by the state? It has been the practice as old as time that governments have subsidized not merely charities,

but private business. Is that not so? What crime can there be if the state extend the hand of help to the work of charity? Anyhow, what is the function of government? Well, I do not pretend to be one of the learned members of the Commission who can discuss this matter philosophically and historically and all that, yet I have always understood that the principal functions of a government are to educate its youth and care for its unfortunates. I have never known of any principle to prevent a great commonwealth like Pennsylvania from doing good. If the state cannot do all the work, what objection is there to contributing of its aid to those who are principally responsible for carrying that work on?

Now, the discussion has revolved around the charitable institutions. I suppose that there are not so many educational institutions involved. I am not able to say how the proposal to eliminate state aid to educational institutions would affect the University of Pennsylvania, State College, or the University of Western Pennsylvania. They, I believe, are the main beneficiaries of the state among the educational institutions. But the moment you strike charities your blow is felt in every corner of the commonwealth, because today there is no considerable section of Pennsylvania, and I do not measure it by county lines, that is not served by a hospital. Now, who is back of them? The vain coxcombs of the community? Not at all. Philadelphia gets about two million and a half of help, Pittsburgh and Allegheny get about two million of help, out of the sum of biennial appropriations, and the rest of the appropriations go to the state at large. Indiana, Punxsutawney and Clearfield are the three hospital centers of the bituminous coal fields known as the Clearfield district. None of them confine their charitable operations to those counties, but they draw on that whole region where their services are so badly needed.

And how did we get those hospitals? I can speak for my own hospital, because the one hundred and seventy-five thousand dollars that built the hospital was appropriated by private individuals. Of the more than fifty thousand dollars required to operate the hospital annually, all but eleven thousand dollars comes out of the pockets of the people or the patrons of the hospital. Now, suppose you were to strangle these institutions; suppose you were to do them to death with a single stroke, or do it gradually, what would happen to the work out there? Judge Gordon said charity will not cease, but I want to tell you that the load of operating may become too heavy for the institutions to function. Now, you gentlemen all know that if you take a motor and attach to it a current that is not strong enough to run the machine, the machine is useless. The contributions and the aid of the state is the current that enables these institutions to function properly. Now, I want to say to Judge Gordon, from a knowledge that is not theoretical, from a knowledge that is gained by tramping all over Pennsylvania and examining these institutions, that the strength of the local charities is not sufficient to keep them going. I know Judge Gordon well enough to know that he does not want to destroy the local institutions. Now, are you going to do something that will strike them down? Following the suggestion of Mr. Pepper, what is needed in this matter? Well, I say that the remedy lies in administration.

It has been pointed out that there are great inequalities in the distribution of the appropriations. Some inequalities do still exist. In former times these inequalities were very great, Mr. McCormick, but the state has undertaken through its Board of Charities to remedy that evil. Great improvement has been made. We do not come here, Judge Gordon, any more to log-roll in the legislature and get appropriations. It would do us little good. The doors are closed to us in that respect. But we go before the State Board of Charities and we lay down to them the amount of work that we have done, the amount of charity we have dispensed and help that we have extended to the unfortunate people that are carried to our doors, and our records are scrutinized most carefully. When the appropriation bill is made up it is made from the records of the State Board of Charities, and that is based upon accurate knowledge of the operations of the institution. But even admitting that there are inequalities existing, that is still merely an administrative question. Now, the commission that was created a few years ago to go into this very question heard practically all the arguments and suggestions that we have heard in this chamber. They tried to remedy these things by introducing into the legislature, and I had the honor of introducing the bills in this chamber, bills for the creation of a department of charity that would have full power over all these administrative questions, and could disperse the aid of the state in such a way as to eliminate these matters about which complaint has been made. And the remedy is still within the power of the legislature. I have said to you that your action here is going to be felt in every section and corner of the commonwealth. I want to say to you that if you introduce here a provision in this proposed Constitution that spells destruction to all or practically all the charitable institutions of the state, or drives them into a centralized state administration, we may as well adjourn now and go home. I think I know something of the popular sentiment on this subject, and I want to say to you that when you touch the heart of charity, you touch a very sensitive organ in the life of the people of Pennsylvania. They are going to say to you and to me that you cannot destroy the charitable system of Pennsylvania, you cannot reduce it to a lifeless piece of political machinery. I for one, whatever may be the outcome, shall not lend my voice to the support of any measure that means the destruction of the charitable institutions of this state.

Mr. McCORMICK. Mr. Chairman: It has been stated that there has been some severe criticism and condemnation of the charitable institutions of Pennsylvania. I have not heard any criticism of any institution, or of the charitable institutions as a whole, but I have heard severely criticised here the method of making appropriations to these institutions, and that is the subject under discussion. I assume that we all recognize that an evil did exist, or we would not be devoting ourselves to debate on this great subject. As the Chairman has said, corrective steps should be taken to correct the evils that exist. The State Board of Charities recommends only two-thirds of these requests, and only thirty-five per cent are accepted. It seems to me it is impossible under existing conditions for that body to function properly, when it is necessary for the Governor to cut down the appropriations made in the legislature to meet the **estimated revenues** of the state. It also seems to me that there are serious difficulties

and evils that must be overcome, and these are the only problems we have been considering here. I think probably every man in this room is identified with some of these charitable institutions. I know I am. I think it a great work, and it is because I think they do a great work, and are capable of doing still greater work under certain conditions, that I am so strongly taking the position that I am today. In answer to Mr. Pepper, who spoke on my national principles, he is right. I do believe in what he says, and it is for that reason that I took this position. I repeat what I said to my full power of expression, and I intended that if these two hundred and ninety-seven charitable institutions are to continue to get state aid, they should be put under the sole control of the state. But I do not think that is necessary. My opinion is that if state aid is gradually withdrawn from these institutions the cities and counties and the philanthropic people of the communities will see to it that their financial needs are adequately met.

Mr. SCHAFFER. Mr. Chairman: I desire to offer a further amendment as a substitute for the one I offered this morning, to add after the words "in the year one thousand nine hundred and nineteen" the words "unless prior to said appropriations, it shall have been approved by the Governor as being proper to receive such an appropriation."

The CHAIRMAN. If there is no objection, this amendment will be considered as part of the original amendment.

Mr. REED. Mr. Chairman: I do not want to take the time, because Senator Fisher has expressed my sentiments better than I can myself, but I want to call your attention to the importance of this subject, in which a large part of the best element in this state has been held up to the light of ridicule, for vanity or other reasons, for associating with some charity. In Smull's Handbook I note the appropriations for 1918 and 1919 to be forty million two hundred and sixty-nine thousand dollars. Of that amount there was appropriated to hospitals, which I assume are hospitals not under state control, the amount of two million six hundred and ninety-nine thousand dollars, or less than seven per cent of the total appropriation; for the homes and institutions for children and dependents of those criminal classes in the state of Pennsylvania, three hundred and ninety-eight thousand dollars, or less than one per cent. Now, if the state of Pennsylvania cannot afford to contribute in one case less than seven per cent, and in the other case less than one per cent to the people who, without any compensation, do the work which these gentlemen would throw on a state bureau, the state certainly is in a critical financial condition.

MR. SCHAFFER IN THE CHAIR.

Mr. THORPE. I have just one idea that might properly be injected into this consideration, an idea brought forward by Judge Kelly. We each, in one way or another, have had something to do with hospitals. I have spent some time in two and have patronized five. I may not show this strain, but that is due to the success of the hospital treatment. Mr. Chairman, in considering this matter let us get right down to the plain citizen who does not live in Philadelphia, or Pittsburgh, or Harrisburg, or some large city. We are confronted, we all know, by the fact that whereas when we were chil-

dren the home was the hospital, today the home is no longer the hospital, and when an inmate becomes ill he is promptly sent to the hospital. Some time ago during the "flu" in Pittsburgh, a member of my household—a Presbyterian—went to St. Margaret's, a good Episcopalian hospital. My experience in hospitals has been with Roman Catholic hospitals. When I went to the hospital, and I speak of them as a plain citizen, I was taken ill very suddenly, and had to go at once. I did not care what hospital it was. I went to the hospital that was selected by my physician, a man who is not only a friend, but also a great physician, Dr. Lichty. It was necessary to have particularly careful treatment from several surgeons on account of an operation last fall. I went to St. Vincent's. Now, I did not care whether it was St. Vincent's or any other hospital. I went there because my friend, the surgeon, whom Mr. English knows very well, said that was the place for me to go. The resident priest came into my private room. He said, "How are you? Are you feeling well?" It is true that I was wheeled into the chapel and heard vespers, but nothing whatever was said to me about sectarian teachings. Judge Kelly's idea is a very good one. Charity is not charity for denominational reasons. It is not because a man is a Presbyterian or a Methodist or a Baptist. A friend of mine is a Baptist, and yet he is on the staff of a Roman Catholic hospital. The man who operated on me is, I think, not a Roman Catholic. I think it is absolutely absurd, while we are considering this matter, to pay any attention at all to so-called sectarian matters. The surgical operation upon myself was performed neither by an Episcopalian, Methodist nor Baptist; it was just a surgical operation, that was all. I think we should be very careful when we consider this matter to eliminate this question of sectarianism entirely and not be beclouded by it. One thing more: A hospital is a necessity today, and where there is one now there must be many more in the future. We are no longer being treated in our homes, we are going to the hospital for medical or surgical treatment. The hospitals today are crowded beyond measure.

Mr. FOX. Mr. Chairman: I move that further discussion of this question be postponed until next Tuesday at 2 o'clock.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress.

RECESS.

Mr. FISHER. Mr. Chairman: I move that the Commission do now take a recess until 2 o'clock this afternoon.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 12.10 o'clock P. M., the Commission took a recess until 2 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Commission having arrived, the Commission will be in order. Before going into the Committee of the Whole, the Chair would like to inquire whether any member of the Commission has anything to offer at this time?

TIME OF MEETING.

Mr. FOX. Mr. Chairman: I move that when the Commission adjourns today it adjourns to resume its session on Tuesday morning next at eleven thirty o'clock.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. Is there anything to come before the Commission at this time? If not, if there is no objection, the Commission will resolve itself into the Committee of the Whole for the continuation of the business before the Committee.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself in the Committee of the Whole, William I. Schaffer, Chairman.

PROPOSED NEW CLAUSE TO THE CONSTITUTION.

The CHAIRMAN. The next subject for consideration is the report of Committee No. 3, reporting a section which it recommends shall be added to the Constitution.

The Secretary read the section as follows:

The right to vote and to hold office in this commonwealth shall not be denied on account of race, color or sex.

On the question,

Will the Committee adopt the report?

Mr. ENGLISH. Mr. Chairman: I think I should say for the sake of clearness that Committee No. 5, of which Dr. Smith is chairman, had assigned to it the other day the entire subject of the desirability of incorporating in the Constitution a clause regarding the eligibility of women to hold office, and because of some possible confusion in the assignment the matter seems to have been included by Committee No. 3 in its report, and I would suggest to the chairman of our committee that he concur in the report of that committee and get the subject assigned to us before the Commission.

Mr. SMITH. Mr. Chairman: The chairman of Committee No. 5 concurs.

The CHAIRMAN: Committee No. 5 concurs in the report of Committee No. 3.

Mr. ALTER. Mr. Chairman: I was wondering if this is broader than the Constitution of the United States. Does this permit Asiatics to hold office?

The CHAIRMAN. It permits Asiatics to become voters, and if they become voters, they can be officeholders.

Mr. THORPE. Mr. Chairman: May I not remind my distinguished colleague that the acts of Congress are part of the supreme law?

Mr. ALTER. Mr. Chairman: I do not know whether Congress has the right to prescribe who shall be voters in the state of Pennsylvania.

Mr. CARSON. Mr. Chairman: It has not; state regulation for citizenship is a state matter.

Mr. ALTER. Mr. Chairman: It is possible then you would permit Chinese, who have been voters, to be officeholders in Pennsylvania.

The CHAIRMAN. In answer to the inquiry of Mr. Alter, the fifteenth amendment, section 1, provides: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state, on account of race, color or previous condition of servitude." I take it for granted that the committee had that amendment to the Federal Constitution in mind when it drafted this one, because in certain respects the language is an-alagous.

Mr. ALTER. Mr. Chairman: It is controlled by the qualification that they shall be citizens, and I suppose the same qualification would be implied here.

The CHAIRMAN. I think that would follow; yes, sir.

Mr. ALTER. Mr. Chairman: I do not suppose that previous condition of servitude would alarm any of the people who are interested with our friends, Mrs. Miller and Mrs. Warburton.

The CHAIRMAN. No; it does not alarm Mrs. Warburton.

Mr. THORPE. Mr. Chairman: That phrase was stricken out.

Mr. ALTER. Mr. Chairman: I want it understood in case of any future developments that it was not stricken out by either Judge Reed or myself.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

The CHAIRMAN: That completes the calendar before the Chair at this time.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress.

RECESS.

Mr. CARSON. Mr. Chairman: I move that the Commission now take a recess until 3.30 o'clock this afternoon.

Mr. THORPE. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 2.30 o'clock P. M., the Commission took a recess until 3.30 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 3.30 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Commission having arrived, the Commission will be in order.

REPORTS FROM COMMITTEES.

The CHAIRMAN. The first business to come before the Commission will be reports from committees.

Has Committee No. 1 anything to report?

Mr. ALTER. Mr. Chairman: Committee No. 1 submits the following report:

The CHAIRMAN. The report will be received.

For Report No. 13 see Appendix.

The CHAIRMAN. Has Committee No. 2 anything to report at this time?

Mr. CARSON. Mr. Chairman: The committee to which was referred for consideration article V of the present Constitution of Pennsylvania, respectfully tentatively reports the following:

The CHAIRMAN. The report will be received.

For Report No. 14 see Appendix.

The CHAIRMAN. Has Committee No. 3 anything to report?

Mr. THORPE. Mr. Chairman: Committee No. 3 has no report at this time.

The CHAIRMAN. Has Committee No. 4 anything to report?

Mr. REED. Mr. Chairman: The committee has had several meetings and has several articles practically settled, one of which I am sure will be reported to the Commission on Tuesday morning. It has others under consideration, but it is not quite ready to report.

The CHAIRMAN. Has Committee No. 5 anything to report?

Mr. SMITH. Mr. Chairman: Committee No. 5 begs to submit its report.

The CHAIRMAN. The report will be received.

For Report No. 15 see Appendix.

ADJOURNMENT.

Mr. FISHER. Mr. Chairman: I move that the Commission do now adjourn until 11.30 o'clock next Tuesday morning.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 4.10 o'clock P. M., the Commission adjourned until Tuesday, January 20, 1920, at 11.30 o'clock A. M.

Senate Chamber,
Tuesday, January 20, 1920.

The Commission met at 11.30 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

PRESENT—19.

Alter, Carson, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Perrine, Pinchot, Reed, Smith, Stackpole, Thorpe, Voll, Schaffer (Chairman).

ABSENT—5.

Connelly, Cuyler, Sulzberger, Tyson, Warburton.

The CHAIRMAN. A quorum of the Commission being present, the Commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports from committees at this time?

Has Committee No. 1 anything to report?

Mr. ALTER. Mr. Chairman: The committee has no report.

The CHAIRMAN. Has Committee No. 2 anything to report?

Mr. CARSON. Mr. Chairman: Nothing further than the one that was reported and is on the calendar.

The CHAIRMAN. Has Committee No. 3 anything to report?

Mr. THORPE. Mr. Chairman: The committee has no report.

The CHAIRMAN. Has Committee No. 4 anything to report?

Mr. PEPPER. Mr. Chairman: We offer a report that covers all the matters referred to us.

The CHAIRMAN. The report will be received.

For Report No. 16 see Appendix.

The CHAIRMAN. Has Committee No. 5 anything to report?

Mr. ENGLISH. Mr. Chairman: No report at this time.

The CHAIRMAN. Has any other member of the Commission anything to bring before the Commission at this time?

ANNOUNCEMENT OF DEATH OF ISAAC SHARPLESS.

The CHAIRMAN. It seems to me to be proper at this time that announcement of the death of Isaac Sharpless, a member of the Com-

mission, whose funeral I attended, should be made. Mr. Sharpless was appointed a member of this Commission by the Governor, but owing to illness was unable to meet with us and discharge the duties that he was designated to perform. I have known Mr. Sharpless with great intimacy practically all of my adult life. He was the president of Haverford College. The thing that first attracted my attention to him in an intimate sense was when he came into the Republican county committee of Delaware county, of which I was then the chairman, as the Republican county committeeman from Haverford township. He felt it part of his duties as a good citizen to participate in the actual conduct of party affairs in the party to which he belonged. It has been said of him, I think by a member of the Commission writing editorially in one of the Philadelphia newspapers, that he was a great president of a small college. That is strikingly true. He created an atmosphere at Haverford and in Haverford College, as one of the speakers at his funeral said yesterday, a spiritual side of Haverford College, which will endure for all times. To me he typified the very highest type of good citizenship in America. Of him it could be very truly said that he was one of the men of character who go to make up the conscience of the community in which they live.

Mr. THORPE. Mr. Chairman: Continuing the thought of the Chairman, it seems fitting that we should pause amidst our work and pay tribute to the character, to the memory of a good man, our associate by appointment by the Governor, whose aid and counsel were denied us because of his sickness, to whom a few days ago, came the messenger with the amaranthine wreath, that stern visitant who knocks alike at the door of the palace of the rich and of the hovel of the poor. Defiant of the fame, of the learning, of the wisdom or of the folly of his victims, that messenger comes, and, as the Poet of Amesbury sings, opens

“that green tent,
Whose curtain never outward swings.”

A good man has passed away; the ornament of his kind, faithful to every duty, public and private, and honored by his fellows. Son of Pennsylvania—product of her life—he forever swells the number of the eminent citizens who leave to posterity the contemplation of a noble character.

Isaac Sharpless, Sc. D., LL. D., was born in Chester county, of this commonwealth, December 16, 1848, and amidst the first month of his seventy-second year he died. Born of a distinguished family of the Society of Friends, by marriage he became allied to another, and to the close of his useful life he practiced faithfully the precepts of that upright portion of our citizenship. Graduated from Harvard in his twenty-fifth year, he continued throughout his life the scientific studies he had pursued at that university, extending the domain of human knowledge by his treatises on astronomy, geometry and education, and by his notable work on “The American College” published in 1915, at a time when the functions of our higher institutions of learning, our colleges and universities, were receiving discriminating attention. The fitness of Dr. Sharpless to publish such a book was unique, himself president of one of the highly efficient

colleges of the country, Haverford, a college which he served as instructor, as professor, and as dean. Nor is this all. To the history of our commonwealth he made a most valuable contribution by his "A Quaker Experiment in Government," his "Two Centuries of Pennsylvania History," and his "Quakerism and Politics." It is not strange that the University of Pennsylvania, Swarthmore and Hobart and his own university honored themselves by bestowing upon him their highest degrees.

Distinguished as was Dr. Sharpless among men of his generation, and honored as will be his memory by posterity, there remains a suggestion from his life that comes to all of us who recall the history of our country. Dr. Sharpless was born during the administration of President Polk. When he was born, Francis Rawn Shunk was Governor of this commonwealth; James Cooper was Attorney General; the Mexican War was yet on; Jackson, who reigned over America eight years, was on his deathbed; Winfield Scott was the military hero of the hour, and at the very center of our national affairs was that famous triumvirate—Webster, Calhoun and Clay. The frontier ran through western Missouri; the "Argonauts of '49" had not yet set sail for the Golden West. Abraham Lincoln, just retired from Congress, was an obscure, struggling lawyer in Sangamon county. New men were peeping over the horizon of politics—Salmon P. Chase, William H. Seward, Thaddeus Stevens, Alexander H. Stephens, Jefferson Davis and Robert Toombs. From the Mexican War, Grant had returned a captain; and Robert E. Lee a colonel; Farragut was yet an unknown youth; Horace Greeley was establishing the New York Tribune; the Whig party was breaking up, and the Compromise of 1850 was in the air. As yet there was not a trunk line in America, nor from New York city a single line of ocean-going steamers. The sickle, the scythe and the cradle had not yet given place to the mowing-machine and the reaper; the sewing-machine was not invented, and presidents and members of presidents' cabinets yet wrote their letters and their official reports themselves. Edwin Booth was winning fame as the greatest Hamlet of the age, and Adelina Patti, in the beauty of her youth, was the musical wonder of the world. Connected with Dr. Sharpless's *alma mater* was a group of men, the glory of America, of whom not the least were Charles Eliot Norton and Henry Wadsworth Longfellow. Nor was the Quaker Poet silent, the immortal author of "Snow Bound," John Greenleaf Whittier. What names crowd the pages of history during the lifetime of our deceased friend, the Fields, the Choates, the Blacks, the Gibsons, the Everetts, the Bancrofts, the Beechers, the Lucretia Motts, and names of other great jurists, great preachers, great orators, great historians, great statesmen!

The life of this eminent citizen of the commonwealth carries us back through eighteen administrations, under sixteen of our twenty-seven presidents. It is a far cry to the days of James K. Polk, in whose administration Dr. Sharpless was born, when the capitol at Washington was an ugly architectural fragment at the bleak end of an unpaved street; when Harrisburg was a straggling town; when Philadelphia, a city of spacious gardens, was loosely scattered between the Schuylkill and the Delaware; when the metropolis of America had not yet harbored a steamship, and Chicago was yet but a muddy, municipal opportunity. The great political dynasty of

Pennsylvania had just become permanently seated on the throne by the entrance of Simon Cameron into the Senate of the United States. America was a slave-holding republic, and Dr. Sharpless was to be a student at Harvard before the abolition of slavery, demand of which (the early, persistent and dominant practice and demand of the society to which he belonged and in which he became an honored leader) was to be written in the national Constitution.

Therefore, Mr. Chairman, I think it eminently proper that we, under the law of the commonwealth colleagues of this eminent citizen, should pause a few moments amidst our work and contemplate the life, the times, the character of the distinguished dead, and enter in our minutes even an imperfect recognition of his high service as a Pennsylvanian, as an American citizen, as an educator, as a citizen of the world honored by his fellow-men.

The CHAIRMAN. The suggestion seems appropriate to the Chair. If it is agreeable to the Commission, the Chair will appoint Dr. Thorpe to prepare such a minute for incorporation in the Journal of the Commission.

EXPRESSION OF CONDOLENCE TO MR. CONNELLY AND JUDGE SULZBERGER.

Mr. THORPE. Mr. Chairman: May I make one other suggestion? For some time there have been two vacant chairs on this side of the chamber. We regret the absence, we deplore the physical indisposition of our two colleagues. A kind word, a word of remembrance, is medicine to the sick and the afflicted. I suggest, Mr. Chairman, that our accomplished Secretary send to Mr. Connelly and to Judge Sulzberger, Commissioners from Philadelphia, an expression of our good will and of our earnest desire that they shall speedily be able to return to the seat of their labors, restored in health.

Mr. STACKPOLE. Mr. Chairman: I second the motion.
The motion was agreed to.

INFORMATION.

The CHAIRMAN. It seems to me that it might be of interest to the Commission to know how the work of the Commission is proceeding in the several sub-committees that have been created. I think there is at present a recapitulation of the work on the desk of each member. As it is very short I will read it. Committee No. 1 has adopted thirty-five old sections of the Constitution and one new one, and has disposed of all work before that committee. Committee No. 2 has on the calendar ten sections, two of them new. It has not reported on twenty-one, and has before it thirty-six sections in their entirety. Committee No. 3 has acted on thirty sections of the Constitution. It has two sections not reported upon, and its work was in the main before the Committee of the Whole. Committee No. 4 has its report now in the hands of the printer. Committee No. 5 is proceeding upon the work, which has, if possible, more problems to study of more importance than any other committee that will come before the Commission. That committee has been handicapped by the absence of Mr. Connelly, because of his particularly intimate knowledge of the conditions as they apply to the

situation in Philadelphia. It seems to the Chair that the amount of work that has been accomplished up to this time, considering the busy men and women who make up this Commission, is very extraordinary.

Mr. PEPPER. Mr. Chairman: The report of Committee No. 4, which is in the hands of the Secretary, and is, I believe, about to come from the hands of the printer, and one or two questions have been asked of me as chairman of the committee by representatives of the press, I imagine representatives of the press, about one of the reports, but I have asked them to regard the matter as not subject to release until after the document shall have been placed on the desks of the members of the Commission. May I inquire of you, sir, whether even before the consideration of the report is reached in its order on the calendar, it may be regarded as proper that they comment upon it when they please, when it shall have been printed and distributed among the Commission? It seems to me desirable that that should be the case if there is no objection on your part, Mr. Chairman, and on the part of the members of the Commission.

The CHAIRMAN. It seems to the Chair that it would be eminently proper that the newspaper men have the opportunity of seeing the report as soon as it comes from the hands of the printer, as otherwise they will be caught in the lurch when it comes up for discussion.

Mr. PEPPER. Mr. Chairman: I do not mean to imply that there is anything of consequence in this report. It is a question that may arise with respect to reports of any other committee.

The CHAIRMAN. Has any other member of the Commission anything to offer at this time?

Mr. REED. Mr. Chairman: Somewhere in this report there is a tentative draft of the Constitution—I am trying to find it—where it is stated that the provision as to trust investments—it is left blank, no action. My recollection was that we passed that and it should be so noted.

The CHAIRMAN. The Secretary will look that up and will report to me and I will advise the Commission.

The Secretary has advised that that section has been acted upon, and was not recast into the revised form, and, until there is more material to go into the recast that will not take place. So it will appear very likely as acted upon after today's proceedings are transcribed. Action has already been taken.

The CHAIRMAN. Has any other member of the Commission anything to bring before the Commission at this time?

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

ARTICLE III, SECTION 17.

The CHAIRMAN. The first section in order for consideration is section 17 of article III of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 17. Appropriations for charitable, educational or benevolent purposes may be made to a corporation or association not under the control of the commonwealth, but engaged in work or service deemed by the general assembly to be for the public good; provided, that such work or service conforms to such standards of excellence as may be prescribed by general law or by an executive agency established by general law; and provided further, that the benefits of such work or service are in no way dependent upon religious belief or denominational connection; and provided further, that every such appropriation shall be made by a vote of two-thirds of the members elected to each House. No such appropriation shall be made to any person or community; but this prohibition shall not affect appropriations for pensions or rewards for military service or for the retirement of judges or of employes of the state, or a state institution or of the public school system.

The CHAIRMAN. The recollection of the Chair is that the amendment, as recommended by the Chair, and the suggestions which were made during the course of the debate on that amendment were made a special order for two o'clock this afternoon. Unless there is a contrary decision of the Committee at this time, that order of business will be followed, and the whole subject that is involved in this section will come up at two o'clock this afternoon when we reconvene.

ARTICLE IV, SECTION 9.

The CHAIRMAN. The next section in order for consideration is section 9 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 9. He shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence and pardons, except in cases of impeachment; but no pardon shall be granted, nor sentence commuted, except upon the recommendation in writing of the Lieutenant Governor, Secretary of the Commonwealth, Attorney General and Secretary of Internal Affairs, or any three of them, after full hearing, upon due public notice and in open session, and such recommendation, with the reasons therefor at length, shall be recorded and filed in the office of the Secretary of the Commonwealth.

On the question.

Will the Committee adopt the report?

The CHAIRMAN. We are now dealing with section 9 of article IV, which was to have been considered, as I recall it, as to the question whether or not the Secretary of Internal Affairs shall continue as a member of the Board of Pardons.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE IV, SECTION 11.

The CHAIRMAN. The next section in order for consideration is section 11 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 11. He shall, from time to time, give to the general assembly information of the state of the commonwealth, and recommend to their consideration such measures as he may judge expedient.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE IV, SECTION 19.

The CHAIRMAN. The next section in order for consideration is section 19 of article IV of the Constitution, the report of Committee No. 1 being that this section shall stand without amendment. This section relates to the duties of the Secretary of Internal Affairs.

The Secretary read the section as follows:

Section 19. The Secretary of Internal Affairs shall exercise all the powers and perform all the duties of the Surveyor General, subject to such changes as shall be made by law. His department shall embrace a bureau of industrial statistics, and he shall discharge such duties relating to corporations, to the charitable institutions, the agricultural, manufacturing, mining, mineral, timber and other material or business interests of the state as may be prescribed by law. He shall annually, and at such other times as may be required by law, make report to the general assembly.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE III, SECTION 13.

The CHAIRMAN. The next section in order for consideration is section 13 of article III of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 13. No term of any public officer shall be extended, nor his salary or emoluments increased or diminished after his election or appointment except that the salary of emoluments of a judge may be increased.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article V of the Constitution, the report of Committee No. 2 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 1. The judicial power of this commonwealth shall be vested in a supreme court, a superior court, in courts of common pleas, courts of oyer and terminer and jail delivery, courts of quarter sessions of the peace, orphans' courts, and in such other courts as the general assembly may from time to time establish.

On the question,

Will the Committee adopt the report?

JUDICIAL POWER.

Mr. PEPPER. Mr. Chairman: I assume that the committee has given consideration to the suggestion that has been made from time to time that this section should be so amended as to correspond in fact with a similar section in the Constitution of the United States, that the judicial power of the commonwealth should be vested in one supreme court and such other courts as the general assembly may from time to time create. It would be very helpful, I think, to some of us to know from the chairman of the committee whether the consideration of that question was regarded by the committee as germane to its deliberation, and if so, whether there was any

doubt in their minds as to the solution of the problem. For myself, it has always seemed that the Constitution of the United States was an ideal one, and I rather hoped that a way might be found to duplicate it in Pennsylvania. I have no definite opinion on the subject, but I should like to have it commented upon by the committee.

Mr. CARSON. Mr. Chairman: Replying to Mr. Pepper's question, I might say that I do not recall that we specifically discussed among ourselves the advantages of reducing the particular section of this article to terms as comprehensive as that of the Constitution of the United States in establishing our supreme court, and such other inferior courts as the legislature may from time to time establish. We had that thought in mind, of course, but we entered into no particular discussion, because we wished to report it to this body for an exchange of views among the different members and get whatever might be regarded as indicative of some provocation of thought on the subject. We did feel that the superior court had been so long in existence and discharging so satisfactorily its appellate duties, although limited to a very small amount of money so far as the jurisdictional limits were concerned, that that court had justified its right to be regarded as a constitutional court. We also felt that perhaps it would too rudely shock the public view not only as existing among members of the bar, but among the public generally, if we took out of the text of the Constitution the enumeration of these courts, common pleas, quarter sessions, oyer and terminer, which are common law courts, and which seem almost to be a part of the habits of the people, and of their judicial phraseology, that it might create perhaps a sense of bewilderment in the minds of men accustomed to a system and familiar with certain courts by name to suddenly find that the Constitution was entirely silent as to them and leave it to the legislature to substitute other courts, perhaps under novel names. We did go so far as to strike out of the Constitution the term "magistrate" and left that to be entirely dealt with by the legislative power in the discretion of the legislature. That I think will indicate to the Commission and to Mr. Pepper what the thought of the committee was.

Mr. GORDON. Mr. Chairman: When the Constitution of the United States was adopted there was no established state and no established court. They had no common law courts as we have today. There even were no United States in operation, and therefore the Constitution provided there should be one supreme court and such other courts as might be provided. But when this Constitution was adopted and when its predecessor was adopted there existed common law courts enumerated here, and the intention of the framers of the Constitution was to the effect that the judicial system as it then stood was to make permanent these courts and leave the legislature to establish such additional courts as will be from time to time provided. It would have been impossible to incorporate them in the provisions of the Constitution of the United States and this Constitution at that time.

Mr. FISHER. Mr. Chairman: I suppose the lawyers here are interested in this question very particularly. I understand the effect of the amendment is to make the superior court a constitutional body. That will remove it from the field of legislative action. I do not know just how—

Mr. CARSON. Its jurisdiction may be either enlarged or diminished by legislation. So we have drafted in a later section that the present jurisdiction of the superior court shall stand as at present until altered by the legislature.

Mr. FISHER. That is what I had in mind, of course, that this section establishes the court constitutionally as a part of our judicial system and its jurisdiction may be changed by the legislature. I wonder whether or not it would be a wise thing for us to incorporate this into the fixity of a constitutional provision. Sometimes I have thought myself, and I am no authority on this subject, that it might be just as well if our appellate courts were merged. If it should be thought wise in the future to so provide, of course, this would interfere with any such measure as that. All you can do is to take the court as established here and then regulate the jurisdiction by legislation.

Mr. PEPPER. Mr. Chairman: Senator Fisher has expressed the thought which prompted my inquiry. The amendment, as I understand it, not merely includes the superior court in our list of constitutional tribunals, but drops from that list the magistrates' courts. Am I correct? This gives point to the observation that the constitutional provision as it stands fixes one tribunal, which we know to be permanent, that is, the supreme court of the commonwealth. It then enumerates a large number of courts which may or may not be permanent. We have evidently reached the point when it is pretty generally recognized that the process of cutting off at least the end of the tail ought to begin, and the committee did that job for the magistrates' courts. But they have put in a little higher up the spine another tribunal, which has commended itself, of course, to the bar and to the commonwealth, but which, it seems to me, has not yet been demonstrated to be a permanency in our judicial system. The reason I asked the question that I did was to get the minds of the Committee working upon the question whether or not a constitutional provision on the subject of the judicial system should not specify the one tribunal which by common consent is permanent since our system of national laws leaves the rest of the system flexible and at the discretion of the general assembly. The difficulty of bridging over the time between which courts are declared no longer to be members of the constitutional group and the time at which such a declaration could become operative without interfering with the machinery of the law is one of the many conditions that I suppose would have to be met in a schedule or appendix to a new Constitution, if one is framed and submitted and adopted. The fundamental question that is raised by the report of the committee seems to me to be worthy of support, though I do not want to adopt it now, and I hope the members of the Committee will support it.

Mr. CARSON. Mr. Chairman: What we want is an open discussion in order to get the point of view of all the Committee. The tentative report we still hold in the control of the Committee.

Mr. PEPPER. Mr. Chairman: Since it is only a tentative report, I do not want to indulge in extemporary debate, but I do want to give the entire matter consideration, and as we are dealing only with a tentative report I suppose it will be in order hereafter to discuss the subject. I do hope that the members of the Commission will seriously consider the question whether the proper function of the article on

the judiciary is not limited to this specification of the one tribunal that is certainly permanent, and conferring upon the general assembly the plenary power of creating others from time to time. We know how embarrassed we have been at different times in dealing with the magistrates' courts by the fact that they are embedded in the Constitution. It may well be that reference in our system of criminal proceeding, the necessity of which may be borne in upon us at no distant time, will require some revision of distribution of jurisdiction and function as between the several criminal courts; and comprehensive and carefully matured judicial code enacted by Congress, seems to me to be quite an ideal way of dealing with the whole subject. As I say we are not prepared to debate it, but we may suggest that the thing is worthy of very careful consideration by the members of the Commission.

Mr. GORDON. Mr. Chairman: My colleague from Philadelphia is thoroughly right in his thought that this section ought to be very carefully considered by the whole body of the Commission. The effect of the particular amendment under consideration is to add another court to our constitutional courts, to add the superior court to the constitutional courts, and therefore after that should be adopted that court could not be changed, except by a constitutional amendment with its slow process. Whether it is wise to do that, in a court with purely statutory powers, is a matter which is subject to debate and open to it; open to it largely because it is a debatable question. I would like to call Mr. Pepper's attention to the fact that the other courts named in this article, if they had not been named as they are, would have required in the Constitution a statement of the courts and their jurisdiction. But in reference to the existing courts of common pleas, that carries with it the idea of the courts of common pleas as they have been established with their jurisdictions, courts of oyer and terminer and general jail delivery courts, and these then carry with them the jurisdiction which for a century they have obtained under common law. In another part of the Constitution the jurisdiction and authority and powers of these courts is defined, but the courts themselves stand for a system of adjudicature, and hence it was incorporated with that system of adjudicature by enumeration. But now by this amendment, a purely statutory court, the superior court, is made a constitutional court by reference merely to its powers as they now exist by law, and that court cannot be dislodged from this constitutional system hereafter, except by constitutional amendment. I think that is a question open to serious debate.

Mr. PEPPER. Mr. Chairman: May I ask Judge Gordon to express his thought upon this point? If he is right, and I have no doubt that he is, that the specification in this section of the Constitution of a court of common pleas, of a court of oyer and terminer, of a court of quarter sessions, carried with it the irresistible implication that it was a court of jurisdiction and procedure as then known and established, whether the same thing will not also be true with regard to the superior court, whether it may not be the superior court as now existing by law that we are putting in here, and if so, whether we might not be embarrassed if it comes to a question of enlarging and changing its jurisdiction.

Mr. GORDON. Mr. Chairman: That is true, and the report says "until otherwise directed by law the jurisdiction and powers of the superior court shall be and continue as at present established."

The CHAIRMAN. For information, the chair would call attention to what is in the mind of every lawyer, I am sure, and that is that the jurisdiction of the superior court has been enormously increased by conferring upon it the power of hearing appeals from the Public Service Commission in some of the most important litigation of the state in every respect, regardless of the amount in controversy.

Mr. VOLL. Mr. Chairman: May I inquire if this amendment gives power to the legislature to make provision for municipal courts and provide or establish their procedure?

The CHAIRMAN. Yes, it does.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 2.

The CHAIRMAN. The next section in order for consideration is section 2 of article V of the Constitution, the report of Committee No. 2 being that this section shall be amended by striking out of the second line the words "seven judges" and inserting in lieu thereof the words "nine justices learned in the law," by striking out of the fifth line the words "The judge whose commission shall first expire," and inserting in lieu thereof the words "The justice oldest in commission," and by striking out of the sixth line "judge" and inserting in lieu thereof the word "justice."

The Secretary read the proposed section as follows:

Section 2. The supreme court shall consist of nine justices learned in the law, who shall be elected by the qualified electors of the state at large. They shall hold their offices for the term of twenty-one years, if they so long behave themselves well, but shall not be again eligible. The justice oldest in commission shall be chief justice, and thereafter each justice whose commission shall first expire shall in turn be chief justice.

On the question,

Will the Committee adopt the report?

SUPREME COURT.

Mr. REED. Mr. Chairman: May I ask the chairman of Committee No. 2 why they changed the number from seven to nine?

Mr. CARSON. Mr. Chairman: The committee carefully considered that matter, and considered that the addition of two judges would make the body of judges in the court of last resort, which is the final expression of the law, more representative in a commonwealth so large as this and so varied in industry. At the present time certain portions of the state are without representatives on the supreme bench. The coal regions have no judge of particular skill in the mining law. The eastern part of the state along the Delaware is also without a representative. It was considered, in view of the criticism which has been so often indulged in, particularly when a fine and nice question had to be decided on the line of four to five, that it seems to intrust too large a measure of power in the final construction of the law to a small body of men; and we have therefore considered that in view of the fact that Pennsylvania has now

grown to be of such dignity and importance in the industrial world, with all sorts of industries, varied perhaps more than any other state of the Union, that it comport with the proper idea of representatives upon the bench that we should add two other members. Relatively the growth of the United States was no greater in proportion than Pennsylvania today, when the number of justices of the Supreme Court of the United States was fixed at nine.

Mr. PEPPER. Mr. Chairman: I venture to think that it is a mistake in practice to deal with a judicial body upon the theory that its constituent members are representatives of the unit from which they happen to come. I understand that the principle of representation is of the essence of our legislative system and that a man in the legislature, whether he be a senator or member of the House, is there to represent the interests of his constituents. Under our judicial system, I understand that the judge is in a very different position. I think it would be very unfortunate to have an increase in the size of the court specifically upon the grounds that a community should have a representative member. I do not think it belongs there. I think if a man comes from the coal regions and has a question of law before him on appeal from an inferior tribunal, that happens to concern the coal region, it may well be that his experience in matters of the sort under consideration fits him to handle the question effectually. But it is not because he represents the coal region that he should be there. It is not in that capacity that he should deal with the question, and he should try to forget that there is a place from which he comes or a place which he calls home. He is there to administer the law as he finds it, and it is the law of the whole commonwealth. Now, that may seem like academic criticism. I am not sure that it is, because I doubt whether this proposal could be sustained merely upon the fact that there is more business at present than the court with seven justices can properly attend to. My information is that that is not the case, for the justices of the supreme court themselves are authority for the proposition that at the present time the court is not an overworked court. They have the time in which to do their work well, and they do it admirably. Therefore, I doubt whether we can justify the increase in the number of the judges on the theory that more men are needed to do the work. If we do increase it, I venture to express the hope that it will not be upon the theory that we want to introduce the principle of representative action into the judicial department of the government. I think that is contrary to the conception which underlies our Constitution and the Constitution of the United States.

Mr. GORDON. Mr. Chairman: I agree with Mr. Pepper that this increase should not be defended upon that principle. I agree with him that judges do not act in a representative capacity and that all of them represent the entire court and the entire community. I should not hope for the success of this amendment if it rested upon that ground at all. But the purpose of the committee in enlarging the court from seven to nine members was this: The science of the law is supposed to be almost a static science. It depends upon precedence and finds its justification in the certainty and definiteness of its decision. And while that is true as a whole that the law ought to be an advancing and progressing science, it can advance

and progress only however through its court of last resort. The law of this commonwealth is made technically in the legislature, but the advancing science of the law is determined in the supreme court. It was thought in this committee that nine was a better number for the court of last resort, which determines the law of the commonwealth, because it gave a greater body of opinion, and it gave a larger number of minds, the majority of whom would be more likely to be free and open than the smaller number. We had in view the Supreme Court of the United States, composed of nine members. The ultimate tribunal of the state of New York is composed of nine members, and I think the final tribunal in the state of New Jersey is composed of nine members. But principally we had in view the Supreme Court of the United States and the empire state of New York. Why is nine the number there? Well, it must be because nine minds are better than a lower number, because they bring a greater number of minds to the decision of the question. And if that was not so, the mere fact remained that it might be seven or it might be five, or it might be three. But more and more the judiciary is becoming the subject of criticism in the country, and more and more are the courts being assailed everywhere among those who are probably in many respects destructive in their criticism, but nevertheless who are well intended and whose criticism may be excellent. Therefore, as the supreme court is the ultimate tribunal, if it does not technically make the law, it comes very near to it in deciding most of the conflicting laws in reference to the interpretation of what the law is. It was thought better to have our courts composed of nine members because there would be from time to time more rapid and fresh accessions of new minds to that court. The term is long, twenty-one years. It has been the practice in the past to appoint and elect men of mature years and it has happened that there has been a steady change in the personnel of that court and very few have lived out their term. With the court composed of nine and with the term twenty-one years, the rapid change in the personnel in that court will be increased and we shall, therefore, have steady accessions of new minds impressed with the ideas and purposes of the society of the times; and, as I have said, as this court is so important in the interpretation and construction of the laws and reaches so vitally into the well-being of the community and is really the ground-floor of the judicial system, it were well, in a democratic state, that there should be a considerable number of minds representing the ultimate judgment of that tribunal. On the score of work, that did not enter into the minds of the committee. The supreme court sits as one body and is not divided into a number of courts like the common pleas. I believe it not to be overworked, but I do believe its metes and bounds should be increased as called for by the report of this committee.

Mr. FOX. Mr. Chairman: As a member of the committee, I desire to say that I am in hearty accord with what Judge Gordon has so well said and with what Mr. Pepper has said, but I believe it would be very unfortunate if we were to incorporate this change in the Constitution for the reason that a representative from any particular geographical section of the state was desirable. It was not my understanding, but I may be in error and I hesitate to differ with the distinguished chairman of the committee, that our

action was based on that reason. But if you will permit me to speak from my rather limited experience in the higher court, I should say that experience has taught me that as to the questions which arise in court, even though they may be peculiar to particular regions, it is always possible to ascertain just what the law is applicable to the facts, and while, as the learned chairman of our committee has stated, there is no representative from the anthracite region, my observation was that the questions rising in the bituminous region were quite similar to those arising in the anthracite region, and we had always on the bench men who were able to dispose of these questions and assist the court in that way. I confess also that while I joined in the report of the committee, I am somewhat doubtful about the wisdom at this time of actually increasing the number of judges to nine. Mr. Justice Simpson, of the supreme court, I believe prepared a judiciary article for one of the law associations in Philadelphia a few years ago, and his suggestion was that the Constitution should provide that the supreme court should consist of seven or more judges, thereby, I suppose, leaving the legislature to determine whether or not the number of judges should be increased. I confirm what has been stated on the floor here that so far as my observation goes since the supreme court has been relieved by the creation of the superior court that the work is not of such a character that the supreme court requires any relief by adding additional justices. I am quite content, however, if the Committee sees fit to vote for the report of the committee; but I am also, as I said a moment ago, in some doubt as to the wisdom of increasing the number of judges in any court at this time.

Mr. CARSON. Mr. Chairman: Only a word as to the statement of the principle on which the increase is suggested. I agree entirely with Mr. Pepper and my fellow-members of the committee that we ought not, and that we did not, and we do not, propose to elect judges from regional or legislative districts. That is true as to the principle and form; but my practical touch with life and with the men who name the judges has taught me that every time a judicial nomination is made somebody takes Smull's Handbook, and looking at the particular map that relates to judicial distribution or to judicial districts, will say the judges in the superior court come from such and such a part of the state, and they begin with the line-up in the north-western section and come all the way down, and that they do the same thing with the supreme court; and if our counties were sufficiently extended and added to to permit of the application of the same point of view, would do it there. Now, I well understand that in framing a Constitution we have to rest on some basic principle; but at the same time we are not striving for an academically perfect instrument. We are establishing a frame of government which will be satisfactory to the people, and their confidence in the judgment of the court will be greatly enlarged, so far as the court of last resort is concerned, where they have a final and authoritative exposition of the law. If that expression of opinion is the result, as Judge Gordon has so well said, of a larger number of minds, and if also it is felt that that larger number of minds is fairly representative of the great industries of the state which are so widely diversified, so much the better. I was much impressed when I had to sit as the presiding officer of what is called the Board of Property and listen to discussions of the

land law of Pennsylvania, that it was a subject about which Philadelphia lawyers knew absolutely nothing. Perhaps the Pittsburgh lawyers stand also in the dark, because their attention has been so exclusively confined to questions arising in large cities. I have listened to old-fashioned lawyers, representative of a past generation, but of a still existing system of laws, and the questions of warrant and surveys and witnesses—using the term “witness” not in the usual sense, but in the sense of a mark, a stone, a stream, an oak tree, a blazed pine, that perhaps disappeared a hundred years or so before, and I realized that there was a great body of law affecting titles in the center of the state.

Mr. KELLY. Mr. Chairman: As a member of that committee, I was very much impressed with the thought that has been so well expressed by Judge Gordon here on the floor of the Committee of the Whole. It is true that I also considered the question of the additional number of judges, which provides for the probability of a more representative body, not representative at all in the sense referred to by Mr. Pepper, because, of course, I agree with him, we all agree with him as to that; but it would be more probable that we would have lawyers from the different parts of the state where different industries are represented, and that in a certain sense it might be said that the bench would be more representative. Now, of course, our lawyers are more or less specialists, their clients make them so, and if a question should come before the supreme court of Pennsylvania concerning the old original land titles, which our chairman has referred to, such as he heard discussed when he was a member of the Board of Property, it would undoubtedly be some benefit to the whole court if there happened to be as a member of that court a man who was well versed and well experienced in the matter of passing upon original titles, if you please. And so if there was a man from the anthracite coal regions and a man from the oil region, and a man from Allegheny, where we have certain industries that perhaps we are not familiar with in other parts of the state, and a man from Philadelphia, who would be familiar with many questions that come from that part of the state which do not come from the other parts of the state, I think, in a sense, it is of advantage if the judges should happen, if you please, to come from different parts of the state, so that as a whole court they would be familiar with all the questions which should arise. Now, if the number of judges should be increased to nine, that does not mean that there would ever be a judge from the coal region, of course, because the people select the judges and they may never select one from the coal region, but it increases the probability. And now the supreme court, in doing its work, finds it necessary as a rule to sit with five judges; in other words, two of the seven are, except upon certain occasions, not sitting. There are a number of occasions where one or two of the seven might, by stress of some private engagement, be prevented from sitting, perhaps through sickness in the family, perhaps through attending the funeral of a friend, or from some other cause, and to some extent I have no doubt that they are relieved from sitting in order to examine cases and to write opinions. The result of the sitting of five judges on the supreme court is that at least four out of the five must agree to affirm or reverse a judgment. If it should be three to two, in other words, if

less than four agree, the result is that a reargument is ordered, which is heard by a full bench upon some future occasion, but all seven of the judges can and do sit. Now, if the number were increased, in all probability then the rearguments necessarily would decrease. I do not think any member of the Committee would think or argue for a minute that the supreme court would not function properly, because it always has, and would not dispense judgment as it always has, even if it should be confined to the seven; but these thoughts which have been expressed were the considerations which moved the committee to add two additional members. I would not throw any light upon the subject by repeating them. Judge Gordon has taken them up, and the chairman has spoken of them, but all of those things are things, speaking for myself, which actuated me in favoring the increase in the number of judges.

Mr. FISHER. Mr. Chairman: For information may I ask Mr. Carson what the numbers have been in the past that constituted the supreme court of the state? I believe that before the present Constitution it was an open question left to the legislature.

Mr. CARSON. Mr. Chairman: I cannot answer the Senator as to the mode of the increase. I mean I have not examined the Constitution to find out whether the former Constitutions fixed the method. At the time of Chief Justice Tilghman there were three, one chief justice and two associates. In the time of Chief Justice Gibson there were five, one chief justice and four associates. At the time the amendment of 1851 was adopted, which made the judiciary elective, the same number was retained which existed prior to that time; and under the Constitution of 1873 the present existing number is seven.

Mr. FISHER. Mr. Chairman: I enter a discussion of this sort of question with a great deal of diffidence. I gather from the expression of the committee that the recommendation to increase is not due to any volume of work that is now pressing upon the supreme court; that the court as now constituted is capable of handling the business that comes before it. I have heard the reasons which would justify an increase regardless of the volume of work to be done. I cannot say that I am impressed with these reasons. At least they are such as to lead me to doubt that we ought to put a provision in the Constitution for an increase that is not justified by the amount of work that is necessary to be done by that court. I think perhaps we might get a more sympathetic response from the people upon this proposition by leaving the number fixed as at present, with the provision that it may be increased by the legislature. Now, in glancing hastily over the provisions of the former Constitutions, I find that in the Constitution of 1790, and the subsequent Constitutions there is no limitation. The number of judges is not fixed. There is no designation of numbers. It was left open to the legislature, and, as Mr. Carson has said, it varied according to the needs of the commonwealth. Now, I doubt whether we can afford to put before the people of the state a provision for the increase of the court which is not justified by the volume of work. In view of that I would offer the following amendment: To substitute for the word "nine" the words "seven or more."

Mr. REED. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. REED. Mr. Chairman: On the principle of amending this Constitution as little as possible, it seems to me that we would make a mistake by fixing "nine" as the number of members without better reasons than have been given. But the chairman has said that it was intended to have the court represent different districts of the state. Then I suppose he spoke as he thought, but there is no assurance that we will have a member from the anthracite region, and if he should be appointed or elected on that theory the history of the supreme court shows that he generally moves to Philadelphia and he is absorbed by Philadelphia and becomes in thought and action a real Philadelphian. So far as I remember, in the last twenty years just two justices have failed to succumb to that influence. One was Judge Elkins, who stayed in Indiana, and the other was Judge Frazier, who is still a resident of Pittsburgh, and thinks in the language of Pittsburgh. Now, that is not very much of a reason. Then we were told about the necessity of the judge who understood the land laws, and the laws in relation to forests. The number of land-law cases that come to the supreme court are very few. We have not had in Pittsburgh since the days of Benny Lucas, thirty-five years ago, anybody who knew anything about original titles or forest and land laws, or had occasion to know it. It is an interesting subject, no doubt, to Mr. Carson, it is a beautiful study—

Mr. CARSON. Mr. Chairman: There were about thirty cases on our calendar concerning land laws every month.

Mr. REED. Mr. Chairman: That is for the Board of Property, but not for the court. I have no doubt he just loves to delve in titles. We come to the next proposition. Are those two judges needed on the bench? Well, some of us doubt it. I know one justice of the supreme court who when the summer vacation came said that he was absolutely out of work. He did not have a thing to do; he walked a little, he tried to play golf, read until his eyes gave out, and then nearly four months after he had written his last opinion he was no better than, to use his own expression, a tramp. He did not have a thing to do that interested him. There is no overwork. I do not think there is any demand for relief. The superior court has relieved the supreme court of a great deal of work, and, of course, you do not make the court any more respected by the people by adding to its number. So that coming back to the original position it seems to me that upon the theory of changing this Constitution as little as possible, and only where there is a manifest evil to overcome, or a necessity to be met, that we should not make this change.

Mr. PEPPER. Mr. Chairman: I hope that the amendment that is pending will not prevail. It seems to me that if we think for a moment we will conclude that the real alternative is to let the thing stand as it now is, or else change it to nine. The reason that would move us to change it to nine is the reason so well expressed by Judge Gordon, that by putting a large number of men upon the bench you get a composite mind that is more likely to answer the expectations of the whole state than if there were only seven. Now, the reason for adding two men to the court is the reason which, if it is sound, will actuate all the people of the commonwealth except the court.

They will be the last people who will be aware of the importance of increasing the number from seven upwards. If you leave it in such shape that there are to be seven men with the theoretical right upon the part of the legislature to increase the number, you are almost bound to precipitate a situation in which unpleasantness will arise between the judges who do not want to have their number increased and the legislature who perhaps are pressed to increase the number. But it seems to me that any reason for an increase, which if it is a sound one, ought to reflect itself in a plenary change in the Constitution. If it is not a sound one we ought to let the thing stand as it is. It seems to me it would be a mistake to do what the amendment proposes and attempt a middle course which seems to me to be neither one thing or the other. I hope that the amendment will not prevail.

Mr. FOX. Mr. Chairman: In offering the amendment I had two things in mind. One is that the legislature could be safely intrusted to take care of the growth of the business by an increase in the number of judges; and the other thought that I had in mind grew out of the discussion about the superior court. Suppose it was the judgment that we abolish the superior court and have but one appellate court in the state, a provision of this kind would let the way open for legislative action on that subject. Now, I think it may be safely done because under all our former Constitutions the number of judges was allowed to the legislature as they from time to time fixed the number so as to adjust the court to the business demands that were made upon it. And I believe that in this instance the legislature could be safely trusted with that subject. Now, I think I have observed during a good many years that when any legislation affecting the supreme court was brought before the legislative body or the assembly that the opinion or the wishes of the court was in some way ascertained, and the action of the legislature was based very largely upon the advice they received from that source. I believe that the legislature would not take any precipitate action in a matter of this kind, but if the necessity arose that they would lend a ready ear to suggestions coming from the supreme court itself.

Mr. GORDON. Mr. Chairman: I would like to say one word; just exactly what is to be avoided? The supreme court will never want itself increased in number. Contentment dwells in those high latitudes, and sweet repose. It is an increase not against the will of that body, but an increase in which their personal consideration is to be entirely dispensed with. Mr. Pepper's last argument was logically perfect and was a cameo in that respect. This amendment suggested by Mr. Fisher ought not in any case to be adopted. The constitution of the court of last resort ought never to be, if possible, at the will of the legislature. Why, a great scandal once arose with respect to the Supreme Court of the United States. Some members here as old as I am will remember it. There was a decision against the constitutionality of the greenback during the war on the legal tender act, and the result was that a Congress not in accord with the administration at that time passed a law increasing the court two members with the result that when that court assembled there was a reversal of the ruling of the former court, holding this issuance of notes to be legal tender. That decision happened to be an excellent one and worked well for the country; but it is a monition, it is

a lesson that the court of last resort ought not to be subject to legislative interference, and I trust the amendment of Mr. Fisher will not prevail.

Mr. THORPE. Mr. Chairman: The membership of the Supreme Court of the United States has been increased from time to time, and I think it would be very helpful, very important—

Mr. McCORMICK. Mr. Chairman; I was going to ask if it would embarrass the Committee if the order of business might be changed after recess to continue the report of Committee No. 2 and postpone possibly for an hour the discussion of the report of Committee No. 1. I have been called on a very important matter, and am very anxious to hear the discussion upon the report of Committee No. 1. I would very much like to ask unanimous consent to continue this discussion of the report of Committee No. 2 before taking up the report of Committee No. 1.

The CHAIRMAN. The Chair hears no objection, and that order will be followed.

RECESS.

Mr. ALTER. Mr. Chairman: It seems to me that this question is too important to have action now taken, with members gazing at the clock and apologizing for speaking a word more, when the discussion should be full and complete. Therefore, I move that we take a recess until 2.30 o'clock.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1.30 o'clock P. M., the Committee of the Whole took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The Committee of the Whole reconvened at 2.30 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

ARTICLE V, SECTION 2.

The CHAIRMAN. The question pending before the Committee of the Whole at the time of recess was on the amendment offered by Senator Fisher, which, as the Chair understands, was to strike out of section 2 of article V the word "nine" and substitute therefor the words "not less than seven."

Mr. FISHER. Mr. Chairman: To substitute the words "seven or more."

The CHAIRMAN. The amendment is to substitute the words "seven or more."

On the question recurring,

Will the Committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee adopt the report?

Mr. FISHER. Mr. Chairman: I move that the word "nine" be stricken out of the report and the word "seven" be substituted.

Mr. REED. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

SUPREME COURT.

Mr. CARSON. Mr. Chairman: My reply is responsive to the request of Dr. Thorpe that I should state the facts as to the standard which Judge Gordon has described as a monition. I think, that the incident is open to misconstruction, and always has been misunderstood, and that it was made the subject of a charge which an investigation of the facts does not justify. The abstract proposition that we ought not to put the courts in such position, under the Constitution, that it would be possible, either justly or unjustly, to make such a charge is one with which I am entirely in accord. No court, particularly the court of last resort, should ever be under suspicion, nor should it be placed in a position of such perilous delicacy as to make possible, in the heat of partisan criticism, a misinterpretation either of the acts of the executive or the acts of the court itself in reaching a conclusion. Simply as a matter of historical reply to the incident to which Mr. Thorpe and Judge Gordon have referred, I may say—instead of extemporizing an answer, as I might have done if I relied on my memory—I preferred sending for a book which I wrote some twenty years ago, when I gave a very careful, and I hope impartial examination of the entire record, and I can best state the conclusion in the elaborate note which I at that time prepared, and find in the second volume of *The History of the Supreme Court of the United States*, on page 449. It arose in connection with the legal tender act, and I shall read the exact words, which will state the conclusions which I have reached:

“A charge has been made that the supreme court was packed for the purpose (of reversal of the original decisions), but examination of a few simple facts and dates shows it to be without foundation, except so far as political prejudice and dissatisfaction with the final result may unite to pervert the evidence. The charge is based upon the common fallacy: *post hoc, ergo propter hoc*.

“The case of *Hepburn v. Griswold* had been argued for the first time at the December term of 1867 by private counsel.” (Let me suggest that the dates are important to bear in mind.) “Subsequently, Mr. Stanbery, then Attorney General of the United States, suggesting the great importance of the question, secured a re-argument, and the case was again argued in 1868 by Mr. B. R. Curtis, Mr. Evarts and Mr. Potter, of New York. Four other cases involving similar questions were also heard. While the question was still undecided, and ten months before the decision was announced, Congress had passed an act on the 10th of April, 1869, to take effect on the first Monday of the following December, authorizing the appointment of an additional justice of the supreme court, and at the same time the act of 23d July, 1866, reducing the number of associate justices from nine to six by not filling vacancies as they should occur, was repealed. At this time the deaths of Justices Catron and Wayne had reduced the number of associates to seven. The effect of the act of 1869 was to make the court consist of a chief justice and eight associates. On the 15th of December, 1869, two weeks after the new law went into effect and nearly two months before the decision in *Hepburn v. Griswold* was announced, Mr. Justice Grier resigned, his resignation to take effect in the following February. Mr. Stanton was commissioned as his successor on the 20th of December, 1869, but died four days after-

wards. Several ineffectual efforts were made to fill his place, but the nominations failed of confirmation. On the 7th of February, 1870, the decision was announced, and at this time, therefore, there were two existing vacancies in the court, one under the act of 1869, the other through the resignation of Mr. Justice Grier. On the very day of the decision (but before the decision was announced),—7th February, 1870—the names of Joseph P. Bradley and William Strong were sent to the Senate in that order without specifying to which vacancy either was to be assigned. In my judgment, it is preposterous to assert that before the decision of the court was an hour old and its effects could be considered, President Grant had matured a well-digested plan, with carefully selected instruments, to accomplish a reversal of a solemn judgment—an event unheard of and unparalleled at that time—by filling vacancies created months before the decision was known, and which would have been filled by others than those finally chosen had not death and disagreement between the Senate and the President deprived the latter of his original choice.

“As to the well-known views of Judge Strong, who had been Lincoln’s choice for chief justice, and who had decided the cases of *Shollenberger v. Brinton*, 52 Pa. St. 9, in 1866, sustaining the legal tender features of the acts of Congress, it is to be remarked that the majority of the judges of the supreme court of fifteen states in the Union had pronounced similar views, and in only two states—New Jersey and Kentucky—had final decisions been rendered adverse to the validity of the legal tender provisions of the acts. *Martin v. Martin*, 20 N. J. Eq. 421 (1870), and *Griswold v. Hepburn*, 2 Duvall, (Ky.) 20 (1865). The state decisions affirming the power were in New Hampshire, Vermont, Massachusetts, New York, Pennsylvania, Indiana, Michigan, Wisconsin, South Carolina, Tennessee, Minnesota, Iowa, Missouri, another in Missouri, one in Nevada, and one in California.”

That is the result of the best examination I could give the matter at the time.

On the question recurring,

Will the Committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3, article V of the Constitution, the report of Committee No. 2 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 3. The jurisdiction of the supreme court shall extend over the state, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties; they shall have original jurisdiction in cases of injunction where a corporation is a party defendant, of habeas corpus, of mandamus to courts of inferior jurisdiction, and of quo warranto as to all officers of the commonwealth whose jurisdiction extends over the state, but shall not exercise any other original jurisdiction; they shall have appellate jurisdiction by appeal, certiorari or writ of error in all cases, as is now or may hereafter be provided by law.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: I notice the committee has changed the word "judge" to the word "justice" in section 2, and I suppose that as far as section 3 is concerned the same conformity will be attended to by a committee on style.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 3-A.

The CHAIRMAN. The next section in order for consideration is section 3-A of article V of the Constitution, the report of Committee No. 2 being that this section shall be inserted as a new section.

The Secretary read the proposed section as follows:

Section 3-A. The superior court shall consist of seven judges learned in the law, who shall be elected by the qualified electors of the state at large. They shall hold their offices for the term of fourteen years, if they so long behave themselves well, and shall be eligible for re-election. The judge oldest in commission shall be president judge and any president judge re-elected in said court shall continue to be the president judge thereof.

On the question,

Will the Committee adopt the report?

SUPERIOR COURT.

Mr. FOX. Mr. Chairman: A suggestion has come to me from the draft made by Mr. Justice Simpson, in the article which I referred to this morning, in which he provides that justices of the superior court have terms of sixteen years, and should not be eligible for a second election; and it has occurred to me that possibly it might be well here, when it is provided for two terms of fourteen years, that possibly a justice that has served twenty-eight years ought to be permitted to retire and ought not be eligible for re-election after the second term. I do not know what the members of the committee or the Commission may think of that suggestion, but I thought I would bring it to their attention.

The CHAIRMAN. There is nothing before the Committee of the Whole but the report of the committee. If Judge Fox desires to offer this as an amendment I suggest that he put it in formal shape.

Mr. FOX. Mr. Chairman: I offer as an amendment that the judges shall "hold their offices for the terms of fourteen years, if they so long behave themselves well, and shall be eligible only for one re-election."

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. CARSON. Mr. Chairman: My brethren of the committee authorize me to say that the committee will accept the amendment.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE V, SECTION 3-B.

The CHAIRMAN. The next section in order for consideration is section 3-B of article V of the Constitution. Committee No. 2 reports a proposed new section.

The Secretary read the proposed section as follows:

Section 3-B. Until otherwise directed by law, the jurisdiction and powers of the superior court shall be and continue as at present established.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 4.

The CHAIRMAN. The next section in order for consideration is section 4 of article V of the Constitution, the report of Committee No. 2 being that this section shall be amended by striking out the entire section as it now reads and inserting a new section to be known as section 4.

The Secretary read the proposed section as follows:

Section 4. The court of common pleas in each judicial district shall consist of such judge or judges, learned in the law, as the legislature may determine are required in the particular district. These judges shall be elected by the qualified electors of the district. They shall hold office for a term of ten years, if they so long behave themselves well. The judge oldest in commission shall be the president judge, but any president judge re-elected in the same court or district shall continue to be the president judge thereof. Not more than four counties shall at any time be included in one judicial district organized for said courts.

The court of common pleas shall have original and general jurisdiction over all civil causes and shall exercise the powers and have, subject to such changes as may be made by law, such jurisdiction as is now vested in the courts of common pleas of this commonwealth, and as is now provided by the acts of assembly heretofore passed, and such other powers as may be from time to time by law conferred upon them.

The several courts of common pleas, besides the powers herein conferred, shall have and exercise, within their respective districts, subject to such changes as may be made by law, such chancery powers as are now vested by law in the several courts of common pleas of this commonwealth, or as may hereafter be conferred upon them by law. They shall have appellate jurisdiction in appeals from the justices of the peace; they shall, within their respective districts, have power to issue writs of certiorari to justices of the peace and to other inferior courts not of record and to cause their proceedings to be brought before them and right and justice to be done.

The judges of the courts of common pleas shall be judges of the courts of oyer and terminer, quarter sessions of the peace and general jail delivery and of the orphans' court, except in such judicial districts as now have separate orphans' courts or where by law separate orphans' courts may be created, and within their respective districts shall be justices of the peace as to criminal matters.

On the question,

Will the Committee adopt the report?

COURTS OF COMMON PLEAS.

Mr. CARSON. Mr. Chairman: You will observe having struck out section 4 of the present Constitution, consisting of only four lines, and substituting this suggested amended section, that the committee has also, in effect, embodied in the whole of section 20 on the chancery powers, the object being to consolidate the common law and chancery jurisdiction in one article, instead of having them so widely separated as they are in the present Constitution. So, in effect, while changing section 4, you are also striking out section 20, but preserving the provisions of section 20 in the suggested amendment.

Mr. FOX. Mr. Chairman: Has the chairman of the committee lost sight of the fact that also sections 9 and 15 of this article are practically embodied, with slight changes, in the report?

Mr. CARSON. Yes, sections 9 and 15.

Mr. GORDON. Mr. Chairman: I would like to call the attention of the committee to a subject which escaped me in the sub-committee. I would like the Commission to note, on page 4, the first paragraph, at the conclusion, as to jurisdiction "such jurisdiction as is now vested in the courts of common pleas of this commonwealth, and as now provided by the acts of assembly heretofore passed, and such other powers as may be from time to time by law conferred upon them." It seems to me that would confer, as a constitutional power, certain jurisdiction given by act of assembly since the adoption of the Constitution of 1874; for instance, counting the vote, making certain appointments, and other duties, some of them not judicial, which are now vested in courts of common pleas. This language, it seems to me, would constitute those powers, the constitutional power of a court, and put them beyond legislative change. These added powers might be given the court, but these powers could not be taken away from it, and as I think the progress of legislatures in the future will be towards reducing some of these extra-judicial powers, I think it would be well not to give them the fixity of a constitutional provision like this.

Mr. CARSON. I think you are entirely right. We reached this conclusion on this section at a time when Judge Gordon was absent. Would not the provisions of the section as reported out, and also the suggestion which Judge Gordon has made, be taken care of by saying, "such jurisdiction as now vests in the common pleas of this commonwealth provided by acts of assembly heretofore passed until subsequently changed?"

Mr. FISHER. Is not that in there?

Mr. KELLY. Mr. Chairman: I would like to call the attention of the committee to the phrase which immediately precedes the part Judge Gordon read. I will begin at the top of the page—"courts of common pleas shall have original and general jurisdiction over all civil causes and shall exercise the powers and have, subject to such changes as may be made by law, such jurisdiction as is now vested," and so forth. It would seem to me that meets the point Judge Gordon calls attention to; and we do not fix the jurisdiction so that it cannot be changed by legislative enactment.

Mr. GORDON. Mr. Chairman: I doubt that. I think that language is borrowed from the present Constitution, which also contains a clause that no jurisdiction vested in the common pleas shall be vested in any other tribunal. I think that would not relate to merely executive as much as to executive-administrative duties, which have been conferred by act on the courts. That is all the concern I have in my criticism of this article. If it had not been for the wave of righteousness which passed over the country and the passage of the prohibition amendment these judges would still have the duty of granting licenses. That clause would fix it in the common pleas, and you could not take it from them without amendment of the Constitution, which ought not to be. I think the clause needs reconsideration and recasting.

Mr. PEPPER. Mr. Chairman: The alternative, it seems to me, is either to adopt the section as the committee has reported it, on the theory that the clause read by Judge Kelly safeguards against the danger in question, or else to leave the whole question of jurisdiction to be determined by the general assembly, in which event the substitute for the section would read somewhat as follows: "Courts of common pleas shall have such jurisdiction and power as shall from time to time be defined by law." In anything of that sort you have to continue by schedule existing powers until the legislature has had time to act under the new Constitution. That difficulty we will have to face with regard to all sorts of provisions in the amendments. It seems to me the alternative we now face is either to do what the committee has done, crystalize the existing jurisdiction, subject to such jurisdiction as may be defined by law, or omit our definition of jurisdiction and leave the legislature to prescribe. I carefully reread the section as read by Judge Kelly, and it seems to me the committee has protected itself. What does it mean, if it does not mean just that "courts of common pleas shall have original and general jurisdiction over all civil causes, and shall exercise the powers and have, subject to such changes as may be made by law, such jurisdiction as now vests," and so forth? That gives them original and general jurisdiction in civil cases, without limitation, which is what is needed, and then provides, as to powers—as distinguished from jurisdiction—that they shall have such and such powers, subject to changes made by law. It seems to me that is safe and preferable to the other alternative, which is to omit our definition of jurisdiction and powers and leave the whole matter to the general assembly.

Mr. CARSON. Mr. Chairman: I think it would be a very dangerous thing to abandon our present jurisdiction and leave it to future partition and definition by the legislature. The courts would be, I might say, in a state of suspended animation. Mr. Pepper's approval of Judge Kelly's reply to Judge Gordon's point strikes my mind satisfactorily. Judge Fox gave particular attention to the special language of this, and I should like to ask him whether he sees anything in Judge Gordon's point which is dangerous to leave unprovided for.

Mr. FOX. Mr. Chairman: The chairman of the committee is right in saying they adopted this at a time when Judge Gordon was absent, but, when we were discussing the draft of this particular section the week before, the chairman was absent and Judge Gordon was present. I was unable to amend the section when we discussed that particular phase of it at that time, but it seems to me that the language used is sufficient to cover the points suggested by Judge Gordon. However, I have no pride of opinion with reference to it and would be glad to have any suggestion from him which will embody his thought and protect the judges of the courts of common pleas from the imposition of any duties which ought not to be imposed upon them.

Mr. VOLL. Mr. Chairman: I am not a lawyer, but I am very much interested in this discussion about some of the court procedure, and I would like to inquire, as an illustration, suppose an employer owed a workman for work performed, say, ten or fifteen dollars, and he refused to pay him; the workman could not obtain the money only through suit, and to enter suit would cost much more than

the amount coming to him. Does that all come under the common pleas court, as this report provides that magistrates have been done away with?

Mr. CARSON. Mr. Chairman: Magistrates have not been done away with. Magistrates have been stricken out of the Constitution, but we leave their present jurisdiction. I cannot answer that question, because, unfortunately, as human society is constituted, it is almost impossible to obtain anything without the expenditure of money. The jurisdiction of the magistrate is fixed. His judgment is final in small sums, and there can be no appeal. If it has been in excess of that small sum, an appeal lies to the court of common pleas. It has been the habit of many of our magistrates to give judgment in favor of the plaintiff, and never consider the merits of the cause. That is one of the bitter complaints coming from all parts of the state, regarding the arbitrary way in which justices of the peace sometimes just listen to the complainant who brings him business, decides for him, and then throws on the other party the burden of appealing. We have been urged to abolish justices of the peace, but we are not prepared to report on a proposition as radical as that, as it would shake the foundation of the administration of justice, to which people have been accustomed for so many years, particularly the poorer class. That is the reason why I cannot answer this question. I do not know how you can get into the common pleas as a matter of original jurisdiction, that is, speaking of my own county. In a suit involving only a small sum, ten, twelve or fifteen dollars, you certainly cannot get there without the expenditure of certain costs for a writ and costs for the sheriff's service. A lawyer's service, I am happy to say—under the generosity of the profession—the poor man is never without the ability to employ the service of a friend, entirely without expense to himself. We have legal aid societies, which are developing, in order to aid the poor. We are engaged all over the country in considering how best we can aid the poor man to obtain speedy and prompt relief. I think you asked a question about the equity side. I should say, on a contract where the amount is fixed, on relations between employer and employe, that would not be the subject-matter for equitable jurisdiction, but would be a matter on the common law side of the court.

Mr. VOLL. Mr. Chairman: I had in mind some things that have been reported on lately through investigations, and I note where Mr. Elihu Root makes this observation and expression, that court procedure should be based on the common intelligence of the farmer, merchant and laborer, and any honest man should be allowed to go into court and tell just his simple story and have judgment rendered. That is backed up by reports made recently by Mr. Smith through the Carnegie Foundation. Over in Cleveland, Ohio, there is a system called the municipal courts. There are seven justices and one chief justice of the municipal court. All cases are tried by the court, unless either party asks for a jury, and the justices render judgment in accordance with the evidence given directly; and small cases such as recited here of ten or fifteen dollars up to one hundred dollars in Cleveland can come in that court, and without cost to the complainant, especially so in matters of wages, have judgment rendered by the court without any expense of consequence.

Mr. PEPPER. Mr. Chairman: May I suggest that in so far as the question raised by Mr. Voll's important inquiry is a question of costs, and that it is a matter determined by act of assembly in regulating the procedure of the courts, and in so far as it is a question of the creation of a court suitable for dealing with small claims, it comes within that section of the Constitution adopted this morning, which authorizes the legislature to create courts additional to those specified in the first section of this article. I happen to be familiar with the document Mr. Voll refers to. It is an epoch-making document published by the Carnegie Foundation, and prepared by Mr. Smith, of the Boston bar, with an introduction by Mr. Root. I happen to have a number of copies of it, and I would like to put some in the hands of the Secretary as a means of distributing them to members of the Commission, because it may be that the Commission upon looking at that report will think it wise actually to include in the Constitution a provision for a small claims court. The experiment has been tried so successfully in Ohio and elsewhere that perhaps the workings of such a court has passed the experimental stage. It seems to have met the needs of litigants to whom the present system is an oppression, and it may well be that we will be impressed with the importance of recommending that such a court be given a constitutional existence. However that may be, the whole question of costs—and the chairman of the committee will correct me if I am wrong—the whole question of costs, which is the thing naturally most on Mr. Voll's mind, in the class of cases he refers to, is now within the power of the legislature and might, by suitable legislation, be dealt with in such a way as to diminish the hardships to small litigants.

Mr. CARSON. Mr. Chairman: The paper to which Mr. Pepper refers, and which Mr. Voll referred to, published by the Carnegie Foundation, written by Mr. Smith, of Boston, certainly is a very remarkable document. Its usefulness, however, is considerably marred by some intemperate expressions, particularly the very inflammatory and misleading title, which is printed on the title page, and misled Mr. Root into not simply an implied but direct attack on the judges, as if they were responsible. A judge does not know what conditions exist. Judges are not either chargeable on theory or can be made in practice cognizant of events or matters arising in a complex human life of conditions which appeal to them for relief unless they have the particulars before them. In granting that relief the mere fact that the administration of justice falls short in performance is not to be chargeable to the judiciary. The misfortune of Mr. Smith's brief is that he makes a direct attack on the judiciary, alienating a great body of most public-spirited and self-sacrificing public servants, who are anxious to ameliorate conditions, but have not the power. The whole subject is certainly attracting a great deal of attention. Everybody wants to help the poor man to justice. Every man laments the conditions of society which subject anybody to suffering, whether the result of misfortune, accident or environment; but it does not do to arraign the existing judicial establishment as being responsible for the production of those conditions. It does not do to add to the burdens of an already overburdened judiciary that for which they are in no way accountable. From one end of this country to the other this question is going

to be discussed. We are going to take it up in the American Bar Association and discuss it particularly at our next session in St. Louis, Missouri. So that you have called attention to a very real thing, and we want to get the relief; but I do not see how a mere dispute between employer and employe, limited in amount to ten or fifteen dollars, can, under existing circumstances, come in the court of common pleas without cost to him; and if he is so unfortunate as not to have money with which to buy his writ, he will have to depend on the legislature for relief in furnishing a tribunal which, without cost to him, but at the expense of the community, will make him, so to speak, what might be called a legal dispensary patient for free treatment.

Mr. PEPPER. Mr. Chairman: This is a collateral matter, and I suppose we should get back to the question immediately at issue; but I should like to express my surprise at the characterization of the monograph I referred to as being in any sense an inflammatory document. "Justice and the Poor" is the title, and is an exact statement of the subject-matter of discussion. I have read the document, which is a long one, with considerable care, and I find no criticism of the judiciary.

Mr. CARSON. Then you must have an expurgated and amended edition.

Mr. PEPPER. Or possibly the comments seemed to me to go farther than they did in the case of my more conservative friend. There are instances, and they are supported by citation of authorities, instances of unfortunate conditions in courts which might be improved by changing the rules. In that sense there are criticisms of judges; but the thing seems to be upright and scientific, and well worth the consideration of the Commission, if they shall see fit to approach the consideration of the creation in Pennsylvania of a small claims court.

Mr. REED. Mr. Chairman: I would like to suggest going back to the subject in hand. I think Mr. Voll will find, if he examines the subject, so far as the state of Pennsylvania is concerned, outside of Philadelphia, which, of course, he is more familiar with than I am, which is a foreign country to us, that we have aldermen or justices of the peace who will entertain these suits for fifteen dollars or twenty dollars, or whatever it may be, practically without cost for the laboring man or employe, and that in most cases, I think if my memory serves me right, in case of the employer or defendant taking an appeal, he has to give security not only for the costs, but for the debt itself. I think the gentleman will find that pretty well taken care of. I know it is not so in Philadelphia, but they should move out into the civilized world.

Mr. FOX. Mr. Chairman: May I also call Mr. Voll's attention to the very lengthy section providing that the common pleas shall have appellate jurisdiction on appeals from justices of the peace and by issuing writs of certiorari to the justices of the peace? So magistrates' courts are not intended to be abolished, and we have not reported finally on the other section which relates to the jurisdiction of justices of the peace.

Mr. VOLL. Mr. Chairman: My main object in submitting the question for discussion on this amendment was to learn whether the

jurisdiction given the common pleas court would prevent the legislature from creating courts.

The CHAIRMAN. No; it does not.

Mr. CARSON. Mr. Chairman: That question can be answered in the negative, Mr. Chairman?

The CHAIRMAN. Yes, sir.

Mr. PEPPER. May I ask the chairman of the committee whether there is, in his judgment, any danger that the clause dealing with the number of judges of the court of common pleas might be construed as giving the legislature the right to diminish the number of judges even during the running of the judicial terms? The language is, "shall consist of such judge or judges learned in the law as the legislature may determine are required for the particular district." Possibly it is a far-fetched interpretation of the section, but it occurred to me as a possible interpretation. There is a flexibility of determination there exercisable by the legislature.

Mr. CARSON. Mr. Chairman: I am glad to answer Mr. Pepper.

Mr. PEPPER. Yes. I did not know whether it struck you as a possible interpretation of that section.

Mr. CARSON. Mr. Chairman: I am glad you called the point up, because at the request of a gentleman who handed me some correspondence, I am going to ask the Commission to consider an amendment of section 5, on page 4 of this report, by increasing the figures from forty thousand to fifty thousand, which might possibly intensify the objection which Mr. Pepper now raises. I do not want to anticipate a discussion on that by a change of numbers. May I do it without being disorderly in the discussion? You will notice that section 5, which is the next one to be considered by us, states that whenever a county shall contain forty thousand inhabitants it may constitute a separate district. Now, I have here a letter—I am not at liberty to disclose the author of it—but the writer says, "I have in mind one matter with regard to the new state Constitution. From my experience on the bench, I am satisfied that the population limit fixed by the Constitution at which a county may be made into a separate judicial district is too low. Counties having a population of 40,000, with a separate judge, that official has entirely too little to do, and it imposes expenses upon the commonwealth; for example, in my district of about 40,000, I do not have more than twenty-five trial court days during the year, and the adjoining county not more than forty days. May I be permitted to suggest that the minimum limit to population, in order that a county be made a separate judicial district, be fixed at 50,000?" If that change is made it might lead to what Mr. Pepper apprehends, a diminution in number of judges, and we would have to consider the effect.

Mr. REED. Mr. Chairman: I do not think that is Mr. Pepper's idea that the court of common pleas "shall consist of such judge or judges learned in the law as the legislature may determine are required in the particular district"—I believe his idea is—I suppose he can speak for himself—is that the legislature might, for instance, reduce the number of judges in Allegheny county from whatever it is—fourteen or sixteen—to nine.

Mr. PEPPER. Yes.

The CHAIRMAN. Would that be a calamity?

Mr. PEPPER. Mr. Chairman: Not in a law-abiding community like Allegheny, but in Philadelphia we would contemplate it as a calamity on account of our litigious disposition.

On the question recurring,

Will the Committee adopt the report? -

It was adopted.

ARTICLE V, SECTION 5.

The CHAIRMAN. The next section in order for consideration is section 5 of article V of the Constitution, the report of Committee No. 2 being that this section shall be amended.

The Secretary read the section as follows:

Section 5. Whenever a county shall contain forty thousand inhabitants it may constitute a separate judicial district, and when so constituted shall elect one judge learned in the law, and the general assembly shall provide for additional judges learned in the law, as the business of the said district may require. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or, if necessary, may be attached to contiguous districts, as the general assembly may provide. The office of associate judge not learned in the law is abolished; but the several associate judges in office when this constitution shall be adopted shall serve for their unexpired terms.

On the question,

Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: I move to amend by striking out the word "forty" and inserting in lieu thereof the word "fifty," in order to meet the views of the gentleman who has written me.

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE XI, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article XI of the Constitution, the report of Committee No. 5 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 1. The freemen of this commonwealth shall be armed, organized and disciplined for its defense when and in such manner as may be directed by law. The general assembly shall provide for maintaining the militia by appropriations from the treasury of the commonwealth, and may exempt from military service persons having conscientious scruples against bearing arms.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE III, SECTION 17.

The CHAIRMAN. We will now resume the consideration of the report of Committee No. 1 on section 17 of article III.

The Secretary read the section as follows:

Section 17. Appropriations for charitable, educational or benevolent purposes may be made to a corporation or association not under the control of the commonwealth, but engaged in work or service deemed by the general assembly to be for the public

good; provided, that such work or service conforms to such standards of excellence as may be prescribed by general law or by an executive agency established by general law; and provided further, that the benefits of such work or service are in no way dependent upon religious belief or denominational connection; and provided further, that every such appropriation shall be made by a vote of two-thirds of the members elected to each House. No such appropriation shall be made to any person or community; but this prohibition shall not affect appropriations for pensions or rewards for military service or for the retirement of judges or of employees of the state, or a state institution or of the public school system.

On the question recurring,
Will the Committee adopt the report?

APPROPRIATIONS TO CHARITABLE AND EDUCATIONAL INSTITUTIONS.

The CHAIRMAN. There are a number of matters suggested as to this section, and, as the Chair understands the situation, there are really two propositions pending before the Committee at this time. One of them is the amendment suggested by Judge Gordon, and as modified by the amendment suggested by Mr. McCormick, which the Chair understands to be acceptable to Judge Gordon. Is that correct?

Mr. GORDON. I never saw my resolution after it left my hands. I do not remember what it provided.

The CHAIRMAN. I understood, and the Secretary so reports, that Judge Gordon concurred in the amendment as suggested by Mr. McCormick as a substitution for his own. The amendment is on paper, and I think on the desk of each member of the Commission. If Judge Gordon does not have a copy the Secretary will furnish him with one.

Mr. GORDON. I think Mr. McCormick offered a resolution, and coming at the same time, I thought I would accept his in place of mine. I have no tears to shed; Mr. McCormick's substitution will suit me very well.

The CHAIRMAN. There was also an amendment offered by me when I was on the floor. That amendment I will now withdraw.

The Chair's understanding of the situation, as it now exists, is that the matter now before us for consideration and discussion is the amendment suggested by Mr. McCormick.

Mr. CARSON. Mr. Chairman: That is the thing I think given on page 4 of this little leaflet.

Mr. McCORMICK. Mr. Chairman: May I say in explanation of the statement of Judge Gordon accepting this amendment, the only difference between the resolution as offered by Judge Gordon is the method of distribution of the funds to be appropriated pending the time they cease altogether. Judge Gordon's methods are to be advised by the Governor and my own goes into more detail in that method of distribution, and is a sliding scale of appropriations until they disappear altogether. Judge Gordon said in passing that he was not wedded to his method of distribution, and I want to say that I am not wedded to this particular form of distribution. It contains the principle that I would like to see adopted, and the change of a few years one way or the other or a change of percentage does not make any difference, but it is the principle that I would like to see this Commission agree upon if it sees fit.

Mrs. MILLER. Mr. Chairman: I, of course, have been all along in favor of taking away the state appropriations from private institutions. I have gone over some of the figures in the books submitted by the Board of Public Charities, and I find in going over those that they appropriated in 1917 about fifteen million dollars for charities in this state. That probably is not absolutely correct, as it does not include some items, and it was difficult, as there were no printed reports of the bills, and nothing from the Auditor General's office, it was difficult to arrive at a conclusion. Seven million seven hundred thousand to state and semi-state institutions and about the same to private charities. All along my feeling has been that we should be just rather than generous, and it did not seem to me that in the state we were taking care of the people that belonged to us. Our institutions for the insane are overcrowded; we are only giving custodial care to the ones that require the most scientific care. In going over the figures of the State Board of Charities, I made an imperfect analysis of some of them, because it seemed to me there were some very great discrepancies in the way in which we distributed our charitable funds to various institutions. I picked out the institutions that were receiving aid in money from the state and it happened that the two that were receiving the greatest aid, one was from my own county and one from Philadelphia county. The Allegheny General Hospital receives ninety-five thousand dollars every year, and the Jefferson Hospital receives the same sum. I was taking the items which the State Board of Charities has given here in this report and putting them down because these hospitals are very similar in size, the Allegheny General having four hundred and fifty beds and the Jefferson Hospital having four hundred and eight; the Allegheny General having two hundred and eighty occupied, and the Jefferson three hundred and twenty-three; the Allegheny General taking care of thirteen hundred and sixty free patients, and the Jefferson three thousand one hundred, thirteen hundred patients that pay something; the state board does not make any differentiation between these. They only say that they pay something. They may pay the full cost or they may pay partially; the Jefferson having three thousand that pay something; and the way the state board computes the free days, the Allegheny General has thirty-four thousand free days during the year, and the Jefferson thirty thousand. Their total expenditures are almost the same, the Allegheny having expenditures of three hundred and twenty-five thousand dollars, and the Jefferson three hundred and fifty-two thousand dollars. Now, the Jefferson is taking care of six thousand patients against two thousand seven hundred in the Allegheny General. Yet we give the same amount to one as to the other. You can follow it down. There is an institution receiving state aid in Philadelphia that only gets thirty thousand dollars appropriation, and it is taking care of more patients, a few more, a hundred more, than the Allegheny General, and it only receives thirty thousand dollars from the state. There seems to be the widest possible discrepancy in the amounts given and the way of calculating it, and it is impossible for a layman to make the calculations. We do not seem to know whether the paid patient is an expense to the state, perhaps just as much an expense as the free patient. Some of those hospitals have a great many more paid patients than they have free

patients. We, of course, do not know how much those pay, and no one seems able to devise any scheme that is going to safeguard the state in regard to those hospitals. I would like to point out again that we are not trying anything new. Twenty-one states have never given any appropriations, and in some instances from the records that we can get their charitable organizations and charitable associations are doing even better work than we are doing. I have learned that over in my own county one of the institutions that takes care of the deaf and dumb children, they are required to pay nothing, although they are boarded and their laundry is done and they are instructed, and all they pay is five dollars a year, although their families shift that responsibility on the state. That is called a semi-state institution. I do not know why it should be called a semi-state institution, because I think it would come under the head of private charities receiving a subsidy from the state. But undoubtedly we are at present making no progress in the situation if we go on in this way. We have made no survey, we have one hospital duplicating another. Two hospitals like the Allegheny General and the Jefferson, both in the crowded districts, in one only half of the beds during the year are occupied, and in the other only two-thirds of them. We make no survey of the needs of hospitals. We have no maternity hospitals, we have no field hospitals for taking care of the maternity patients. We seem to go just gayly on giving our money without any real discrimination. One of the main reasons that I am opposed to this is that I do not see how we are going to fix any method whereby we can safeguard ourselves against this indiscriminate giving.

Mr. ENGLISH. Mr. Chairman: For my part, I am very glad the discussion has covered quite a wide range. I am sure that it is beneficial for all of us that the discussion has covered the widest possible range on subjects so closely related to this section, and to have the benefit of the best thought that the Commission has to contribute toward it. I am not in favor of narrowing the discussion now or at any other time. I know that it is not popular, however, to suggest to a body as ably constituted as this one the limitations that are imposed upon its authority. It may not be popular to suggest to the Commission that we have from the legislature a very limited agency with a very well-defined power of attorney from them. May I, sir, at this time, because I think it is time that we consider it, draw your attention to what I conceive to be the function of this Commission, not only in regard to discussion on this section, but the function of the Commission in regard to every section and to every article of the Constitution of 1873? May I call your attention to section 2 of the act of assembly which created this Commission? "It shall be the duty of the Commission on Constitutional Amendment and Revision to study comprehensively and in detail the provisions of the present Constitution in the light of modern thought and conditions, with a special view to the necessity or advisability of changing or omitting any such provisions, in order to obtain and secure for the people of this commonwealth a form of government best suited to their needs and most conducive to their welfare. If the Commission find a change in the Constitution advisable, it shall determine the best means of effecting such change, whether by amendment of particular sections or articles or by general revision."

I should like to stress, sir, that part of the section which says that we are to study the existing situation in the light of modern thought and conditions. I do not agree with the idea that we are merely a debating society. I do not agree with the suggestion that we are a body of plenipotentiaries, gathered here clothed with authority to impose a sort of original social compact upon a community of millions of people not already quite thoroughly organized. It seems to me, and I believe my idea is borne out by the manner in which the Commission is made up, that we are intended to be merely a cross-section of the commonwealth of Pennsylvania gathered here for the purpose of determining, if we can, the modern thought of the people of Pennsylvania in regard to their Constitution. I submit that the test of our functions is just in that. It does not make any difference what our individual beliefs or prejudices or notions may be in regard to the fundamental laws which are to govern the people of this state, unless we in our hearts can say that the beliefs which we entertain are representative of the modern thought of the people of Pennsylvania. It seems to me that it would be a breach of the obligation imposed upon us by the language in this statute if we were to attempt to incorporate pecadillos of our own into the draft which we will submit to the legislature as our report. It was the failure to keep in mind this thought that led to the rejection of the Constitution so laboriously drafted in the state of New York. It was the failure to keep in mind this thought which resulted in the rejection of the Constitution of Massachusetts. Now, the people of Pennsylvania are just as alive, just as thoughtful and just as pronounced in their convictions as are the people of New York. We represent in this body labor; we are from the various counties; we have both sexes in this body; I do not know that anybody cares to say that he is a capitalist, but capital is represented in this body. I take it that it was the intention of the appointing power as nearly as possible to find out through a thoroughly representative body just what is the modern thought of Pennsylvania in regard to the Constitution of 1873. Now, it might be not easy to determine the thought of the people of Pennsylvania in regard to a great many sections of the organic law, but there is no section of it as to which it is easier, from the clear record that has been placed before us, to determine the thought and the feelings and the convictions of the people of the state. Some one has sent to every member of the Commission a record of the appropriations of the various legislatures of Pennsylvania back to the year 1850. In one of the pages of this report we have set forth in detail for each year the appropriations that have been made, the number of institutions that were beneficiaries of the legislative acts, and the amount contributed to these private charities. We find that in 1874 thirteen institutions were beneficiaries of the legislative grants, and that the amount granted did not exceed two hundred and twenty-five thousand dollars. Since that time, sir, there were, I believe, twenty-three biennial sessions of the legislature of Pennsylvania, and we find a gradual growth and development from the session of 1873 to the session of 1919, in which the number of institutions increased from thirteen to two hundred and ninety-seven and the amount granted by the state from something less than a quarter of a million to something like eight and one-half millions of dollars.

Now, to my mind we can find no more conclusive evidence of the modern thought of the people of this commonwealth than is presented by this record of appropriations. I apprehend that there may have been times in the legislative history of the commonwealth when the men selected to represent the people at a particular session of the general assembly did not do so, but I think ordinarily that members of the legislature are representative of the thought and feeling of the people who send them here; and we find covering a period of nearly half a century that there has been a steady growth and development not only in the number of institutions which are the beneficiaries of these state grants, but also the amounts that have been given to private charities. I say, therefore, as I see these things, as I understand from my own humble point of view, first the functions of this Commission and then the evidence of the thought and feeling of the people of the state, that the question is not open to doubt or controversy in my mind as to what their attitude is in regard to this principle of appropriation of state funds to private charities. I do not like to think that the state of Pennsylvania is handing out charity to its citizens and that the people in the commonwealth should put themselves, as a mere matter of social obligation to their fellow-men, to the expense and inconvenience of founding and continuing these institutions. I do not feel that they when they come to the state are suppliants for the benefaction of the state; they have nothing for which they need to be grateful to the commonwealth. They are conducting, in a measure they are discharging, the obligation which otherwise would be the state's and they are doing it, in my opinion, in a better and more effective way than the state through any instrumentality that it could work out would be able to do the same work. There may be criticisms that are perfectly sound as to the process by which these funds are paid to the institutions. There may be criticisms perfectly sound as to the administration of certain of these institutions, but it seems to me that all of these criticisms are effectually met and disposed of by the language of the section which the committee proposes to substitute for the existing sections eighteen and nineteen of article III. I have heard nothing read in the way of a substitute that betters the language of that section, nothing that better expresses, in my opinion, the modern thought and the modern conditions to be found in Pennsylvania.

Now, I am opposed to the amendment suggested by the gentleman from Dauphin county, because as I understand it he intends to carry forward into it that curious ambiguity to be found in the language of the existing Constitution, substantially to the effect that the state shall not appropriate any money to sectarian or denominational institutions. It seemed to me the other day in examining the old sections in the light of these various substitutes that it might be interesting to find out for my own satisfaction, it may be perfectly clear to all the other members of the Commission, the precise meaning of the word "sectarian" and the word "denominational." What is a sect? What is a denomination? How do you distinguish them? Then, when you have settled these things in your own mind, when does an institution become sectarian and when does it become denominational, and is there any distinction between them? The other day there was some discussion on the floor between the Attorney General, for whose

opinion on any proposition of law, in common with the rest of the Commission, I entertain the deepest respect, and one of the gentlemen from Philadelphia, in regard to the meaning of these words. Some decisions of the Supreme Court of the United States were cited, so I started to look for decisions. I ask your attention to the fact that in the existing Constitution, and in the proposed amendment, the words are to be found without any qualifying words whatever, "sectarian or denominational institution." I found, on looking into the matter, very much to my astonishment that Mr. Webster tells us that there are three kinds of sects; first, we have the religious sect, consisting of the followers of any particular religious idea or ideal; and then I find that we may have a philosophical sect, the followers of the idea of a particular philosopher; and then, to my utter amazement, it was possible to have a political sect. I would like for a moment, if the Commission will indulge me, to call the attention of the members to a decision by the supreme court of one of our reputable states which holds this, and I refer now to the case of *State vs. The Board of Directors of St. Louis Schools*, in the opinion of the supreme court of Missouri, 35 Southwestern Reports. The Constitution of Missouri has a clause something like this.

"The constitution of Missouri prohibits the general assembly or any county, city, town, township, school district or other municipal corporation from ever making an appropriation, and from paying from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose, and from helping to support or sustain any private or public school, academy, seminary, college, university or other institution of learning controlled by any religious creed, church or sectarian denomination whatever."

"Within the spirit of this provision of our organic law, we hold that the prohibition of the constitution is as imperative against the support of a republican or a democratic school out of public funds or taxes exacted from all citizens of all party affiliations as it is against the support of a Catholic, Baptist, Presbyterian or Methodist school. Sectarianism includes adherence to a distinct political party as much as to a separate religious sect."

Now, if we were to follow some of the discussion in this Commission to its logical conclusion, it seems to me that it would be necessary, so far as the institutions which received state aid were concerned, to be careful to see to it that those who are in control of the institution, if control is the test, sir, of sectarianism, that not only they do not belong to a particular religious sect, but that they be very careful to balance the control in it evenly between at least two of the dominant political parties, and if by any chance it should be determined that a majority of them are followers of Spinoza or Schopenhauer or any of the other philosophers, I am afraid that we should then find ourselves in conflict with this provision of the Constitution of Pennsylvania. It was interesting to observe in the debates of the convention of 1873 that it was difficult to get a definition of these terms. One of the purposes of this body is to remove from that instrument any of the ambiguities to be found there. It seems to me that in view of the very dangerous and mischievous lengths to which judicial construction of this language might take it, the certainty that there is a possibility that courts might defeat the

intention of the people and the thought of the legislature in adopting the Constitution, this ambiguity should be removed. As I have said before, nothing has been suggested that exceeds in clearness the substitute originally reported by the committee. I hope the report of the committee will be adopted, because I believe it reflects the modern thought of the people of Pennsylvania, and I think that we ought to emblazon that phrase on our memories and to keep it there during all the deliberations of this Commission. Because, as I say, the report of the committee expresses the modern thought of the people of Pennsylvania in regard to this particular subject, because it removes the ambiguous language to be found in the old Constitution, and which would be kept there by at least one of these proposed substitutes offered subsequent to the report of the committee, I trust the report of the committee will be adopted.

Mr. THORPE. Mr. Chairman: It seems to me that there is a propriety at the point suggested by the very able remarks of our friend from Erie, to distinguish between administrative and organic provisions. Now, Mr. Chairman, there is a picture there on the wall that suggests a great deal. On the day that Washington made those remarks, Franklin was too feeble to speak, and it appears that the Constitution was likely to go by the board, and was not to be signed. The old gentleman, Dr. Franklin, cleverly suggested what was done, and James Wilson, who is represented at the table, read his speech. Now, the old Doctor said, if you will remember, "Any government so long as it is well administered will not be a tyranny."

I have listened with great appreciation to what Mrs. Miller said. I have heard lamentable stories from the management and the inmates of some of our public institutions. We are confronted by administrative difficulties quite as much as by economic and fundamental conditions. What is the Constitution for? Now, since the new states came into the Union beyond Minnesota, it appears, if you will recall to your memory, that there has been an article introduced, an article quite administrative in character. In our form of government there are today three branches, executive, legislative and judicial; but, Mr. Chairman, is it not true that experience has proven the truth of what Dr. Franklin has said, that it is the administrative that is the test of the whole thing? Cannot something be done by this Commission in line with the very able suggestion of Mr. English to make the administration of the fund a little more beneficial to the public? As a citizen of Pennsylvania, as a taxpayer of Pennsylvania, I do not object to the state's helping beneficial institutions. Since we met I have conversed with quite a number of physicians who are on the staffs of hospitals, and they have expressed their alarm at the suggestions that the help from the state was to be removed, saying that if help is not given charitable institutions must cease. Charitable institutions are local benefits and they are founded by the care and consideration of unselfish people. I am not going to presume to discuss that side of it; but cannot something be done in the organic law of this commonwealth which will secure an efficient inspection of the use of the funds that will have results adequate to the appropriation made? One of my friends was in Jefferson. There were missing certain conveniences, as are missing in all hospitals; I do not know whether it was due to lack of appropriation or whether it was due to lack of administration.

We thought it was the need of a broom and a dustcloth. Now, Mr. Chairman, cannot we do something as a Commission, acting up to what was so very well read to us from the act creating us, can we not do something to get beyond the mere tradition of economic separation and equipment and get something that will secure for us administrative efficiency of the seven million seven hundred thousand dollars? A large sum, but what is the difference if the work is done well, and it is a little money if it is well done, and goes a long way. I venture to suggest to this Committee that it take this into account. I think we will all agree that if the fund is well administered there could be no abuse.

Mr. ALTER. Mr. Chairman: A substitute was offered on last Wednesday, I think by Dr. Thorpe, which seems to my mind to be a very excellent expression, to take the place of section 17 of the present Constitution, leaving the restrictions now provided under section 18 to be taken care of in such manner as the Commission may determine to be wise. That section is very brief, and to bring it back to the recollection of the members I will read it.

“Appropriations for charitable or benevolent purposes may be made to a corporation or association in this commonwealth not under its control, but engaged in work or service deemed by the general assembly to be for the public good, but provided such work or service conforms to such standards of efficiency as may be prescribed by law; but every such appropriation shall be made by a vote of two-thirds of the members elected to each House, and the corporation or association receiving such appropriation shall be subject to inspection by the commonwealth according to law and shall make reports to the general assembly or to such person or persons as it may designate of the precise use made of such appropriation.”

That section, Mr. Chairman, provides practically the procedure which is followed at this time. It puts into the Constitution the requirement for certain things which new as a matter of fact are done. It is not my observation that these appropriations to charitable or benevolent institutions are made in an unsystematic manner. We have first the careful survey made by the State Board of Charities; we have the standards of service which that board recommends and insists upon; we have careful deliberation by that board and recommendations made by it as to these institutions, how much an institution should properly receive from the state for a period of two years based upon the work the institution is doing, and upon the standards which the board has followed. That recommendation is made to the state legislature and the appropriation committees of the two Houses visit the institutions, taking the recommendations of the State Board of Charities as the basis. After inspecting the institutions and obtaining the views of those who are in charge of their management they make their recommendation of the amount which should be appropriated. Thereupon the legislature makes appropriations which are subject to the review of the Governor under his power to reduce any item or items in appropriation bills, and finally we get the appropriations enacted into law. Now, it was suggested here during the discussion several days ago that this money is going to these institutions without any requirement that it be accounted for. Mr. Chairman, such is very, very far from the case. This is about the method: Suppose a hospital is getting an appropriation of eight

thousand dollars to cover a period of two years. The period of two years is divided into eight quarters. At the end of the first quarter, the auditor from the Auditor General's Department goes to the institution and makes a careful audit of its books. He ascertains the cost to the institution of the service that has been rendered during that quarter. Then he ascertains how much the institution has received from paid patients and through contributions during that quarter, and the balance shows a deficit which represents the amount of free service the institution has rendered during the quarter. If that balance representing the free service is one thousand dollars or more, then they get their one thousand dollars for that quarter, one-eighth of their appropriation for two years. If that balance representing the amount of free service during the quarter is seven hundred and fifty or eight hundred dollars that is all they get, and so on one quarter after another during the period of two years.

Mr. CARSON. Mr. Chairman: If their free service is in excess of the appropriation?

Mr. ALTER. Mr. Chairman: They get only the appropriation. At the end of the first quarter in the case that I have used as an illustration, where an appropriation of eight thousand dollars has been made for two years, it would be one thousand dollars a quarter. If at the end of the first quarter it appears that the balance representing the amount of free service is fifteen hundred dollars, they only get their one thousand dollars.

Some speak of these institutions as state-aid institutions. I call them aid-to-the-state institutions; institutions to which people of benevolent disposition in the local communities give their time, give their money, and their energy and skill without compensation, to help perform a public function, and the money which they give and the time they give and the efforts they give are all contributions to the public, contributions to the state in aiding it to perform a public function. Some of these institutions are conducted by religious organizations, and valuable service is rendered by them. The great majority of them I think are not religious organizations, but community organizations. The great hospitals which my colleagues are familiar with, the Allegheny General Hospital, which has been mentioned here this afternoon, the Homeopathic Hospital, the West Penn Hospital, the South Side Hospital, the Bellevue Hospital, the Sewickley Valley Hospital at Sewickley, the Citizens Hospital at New Kensington, the Allegheny Valley Hospital at Tarentum, all in our community, are community organizations where the people of the community, feeling that work of this kind was necessary to be done, have organized for the purpose of instituting such a work and to help carry it along, and all the work that they do and all the money they give is clear gain, as I look at it, to the state. The money that they give is set down by the Auditor General as against the service they render, set down along with the money paid by paid patients, before he makes his deduction by which he arrives at the deficit. The secretary of the Board of Public Charities remarked to me the other night that in the case of the West Penn Hospital, in which former Senator Flinn is greatly interested, the canned fruit that Mrs. Flinn sends in from the Senator's farm at Cross Keys is valued by the Auditor General and is set down as a contribution as against the appropriation which comes from the state; set down with the fees paid by paid

patients and other contributions by individuals against the cost of operation for the quarter before the state money is paid over.

Now, Mr. Chairman, the heart of this section proposed by the gentleman from Dauphin is the provision proposed by the gentleman from Philadelphia, and so earnestly contended for by him the other day. I do not think it is helpful for us to suggest at this moment methods of administration, especially until we first determine this one fundamental question, shall this proposal to discontinue state appropriations to such institutions be adopted? Then when we have determined that question, and as I feel confident we shall do, when we have determined it in the negative, then we can have the aid of all the members of the Commission upon the question of the most efficient method of administration; but let nobody imagine, Mr. Chairman, that the present method of administration is careless or is lacking in system, or is lacking in due regard for the interests of the commonwealth in making these payments.

Mr. KELLY. Mr. Chairman: I would like to add a brief word in opposition to the amendment offered by the gentleman from Dauphin. I presume that the community in which I live does not differ very much from other communities. We have in Lackawanna county, roughly speaking, three hundred thousand inhabitants, and we have in the city of Scranton about half of them. We have what is practically a continuous community from Forest City, at the Susquehanna county line, to Duryea, at the Luzerne county line, a distance of approximately thirty miles, a rather narrow strip composed originally of different villages and mining towns which by increase in population have grown to be almost a continuous community, constituting, however, different sub-divisions of the county. The principal industry in the county where I live is the mining of coal. It is a rather perilous occupation, and unfortunately accidents happen rather frequently. Men are not infrequently taken out of the mines badly maimed and injured. They work in the mines in the dirt. Their clothes are always black. They are very much exposed to blood poisoning in case of injury on account of the dirt in which they work, and their injuries are such as make it necessary for them to receive prompt and efficient surgical assistance. In that community composed of three hundred thousand people we have just one state hospital. If there were no other hospitals to which the maimed miners could be taken except that state hospital, undoubtedly a great number of lives would be lost which are now saved. The little children who are sometimes run down by the trucks and automobiles on the main artery of travel up and down the valley and are taken to the nearest hospital are often saved, where they would not be saved if there were no convenient hospitals to which they could be taken. A comparatively few years ago we had no state hospitals in the whole county; but the hospital in the city of Scranton in the center of the city, which I think is now called the State Hospital of the Northern Anthracite Coal Region, within comparatively recent years has been taken over by the state, and so that is a state institution, and that only. Now, we have a hospital in Carbondale, a city sixteen miles north of Scranton, called Carbondale Emergency Hospital, a private charity, what my friend, Mr. Alter, designates a community charity, managed by the charitable people of the city of Carbondale, and supported very largely from the funds which are volun-

tarily contributed by the charitably inclined people of that vicinity. Half way between the city of Scranton and the city of Carbondale we have the Mid-Valley Hospital in Blakely, some seven or eight miles north of Scranton. Some four miles south we have the Taylor Hospital; and so from one end of the county to the other we have a number of hospitals, and such a number that makes it unnecessary that any person injured would have to go over, say, three miles in order to get to a hospital. I am very much opposed to any principle which will deprive these hospitals of the assistance which they get from the state. I was looking over the appropriations made by the legislature of 1917, and I found that the state hospital, the only state hospital in the county, received eighty-seven thousand five hundred dollars for maintenance, and seventeen thousand five hundred and fifty dollars for buildings or improvements. Eliminating the improvement fund, it received eighty-seven thousand five hundred dollars, which I assume was for its maintenance for two years. I find that the total of all the other appropriations to hospitals was sixty-nine thousand five hundred dollars. Practically twenty, or rather eighteen thousand dollars, to be exact, less to all the other hospitals than was given to one state hospital. I have no statistics, but I think I am safe in saying that it would be ridiculous to assert that the state hospital rendered as much service as all the other hospitals combined, and I do not hesitate to make the statement that that could not be so. Now, we have a number of homes there; the only reason I took these figures of 1917 was because I did not have at hand at the time I took them the appropriations made in the legislature of 1919, and in this report which I find upon my desk this morning, while we have the appropriations to the private hospitals for 1919, we do not have given to us the amount of appropriations made to the state hospital, and for that reason I am using these figures of 1917; but the Associated Charities and Humane Society got the munificent sum of twelve hundred and fifty dollars appropriated to it for two years; the Florence Crittenton Mission got fifteen hundred dollars; the Home for the Friendless got five thousand dollars; the House of the Good Shepherd got five thousand dollars; St. Joseph's Home and Maternity Hospital got seven hundred and fifty dollars; St. Patrick's Orphan Asylum got fifteen hundred dollars; or a total of twenty thousand dollars for our homes in the county of Lackawanna.

I am not going to take the time of the Commission in telling the good these different institutions have done. I am not going to tell about how, when we were suffering about a year ago, or a little bit more, from the influenza epidemic, the private charities and homes took care of those who could not get into one of the state hospitals or could not get into any of the other hospitals because they were over-crowded in those institutions. They set up a temporary hospital, if you please, in the armory in Scranton for the purpose of taking care of the unfortunate people who could not get hospital accommodations. Some of the prominent men and women of the city, and I presume that they were no different from the men and women of other communities, went to these improvised hospitals and did all kinds of menial work, such work as they were able to do, in order to benefit humanity. Now, we have a hospital in Scranton called the Moses Taylor Hospital. It is a beautiful hospital; it takes up a city

block in the very nicest part of the city. It has buildings equipped to do hospital work. It is a private charity. It is supported by the interest upon the endowment fund that was left by Moses Taylor, whose name it bears. It gets no aid from the state. I think it has never asked for any aid from the state, but if it were to be incorporated into the fundamental law of this commonwealth, if on account of the decrease of the purchasing power of a dollar, or if on account of any misfortune that may happen to that endowment fund or any part of it, if it was not able to function as a hospital, if it must shrivel up and die as a hospital because it would be unlawful that some appropriation could be made by the legislature of this commonwealth to assist it in functioning, it would be most unfortunate. The land is there, the buildings are there, the furniture is there, the operating room is there, and everything is there to make an up-to-date, first-class hospital. I think any such policy as that does not even have the benefit of being a logical policy, and certainly if there is any logic in the policy, it is very, very cold logic. It will never appeal to the people of my community, I am sure.

I cannot throw any light upon this subject. I am sorry that I cannot show more familiarity with the subject. I am sorry that I cannot say that I have more knowledge and experience along the line of public charity than I have, but I would not want this question to come to a vote without at least expressing my opposition to the principle which is advanced by the learned gentleman from Dauphin and the learned gentleman from Philadelphia. I do not care what is done by way of regulating these institutions. I do not care what is done by way of throwing safeguards around the public money, but as far as the principle is concerned, and I agree with my friend, Mr. Alter, that that ought to be first settled, I would like to express by opposition to the principle that would prevent these charities from receiving any aid from the state. They are not under state control, not under absolute control of the state, say our friends. Would our charities be any better if they were under the absolute control of the state? Would the charities of the commonwealth be better administered if they were headed by the salaried officers of the state, instead of being headed and managed by the charitably inclined men and women of the state? I for one doubt it. I think it would take the soul out of them. I do not think the people of the state would ever adopt a Constitution that had any such principle as that embodied in it. These institutions are all under the control of the state. The state can exercise such control as it sees fit over them. The police power is vested in the state. The state may say whether they shall have proper fire escapes, proper corridors, proper sanitary arrangements. The state may make any rules that the legislature in its wisdom may see fit to make, to make them better if they are not good enough. If they are not properly managed, if there are any reforms to be inaugurated, let the state inaugurate those reforms by all means. The difference between their being under absolute control of the state and being under the control of an association, whether it be religious or otherwise, that manages them, the difference is simply between somebody holding a political office being at the head of these institutions, and somebody, or some number of persons who have nothing at all at stake and who have no interest except the interest of humanity. I say this without any reflection whatever upon state management,

and without any reflection whatever upon any state institution which is under the so-called control of the state.

Mr. STACKPOLE. Mr. Chairman: I ventured to suggest the other day in some comment on this proposition that we are altogether likely to hear from those outside. I want to quote just a few things from a very illuminating editorial from a paper printed at the home of Judge Kelly, a newspaper of character and prominence, and if I might suggest, it should be considered by those who are urging the abandonment of the present system. I refer to the Scranton Times. I shall read only a few paragraphs, because I do not want to burden you with it. It is a very strong editorial:

"A proposal has been placed before the committee on revision of the Constitution which would cut off all state appropriations to institutions not of a purely state character. It ought to be rejected."

"If the state of Pennsylvania would immediately establish institutions to supplant the hospitals, the associated charities, the foundling homes, the asylums for the aged, the orphanages, the local sanatoriums for consumption and similar institutions, upon the cutting off of appropriations, perhaps the disastrous effect would not be felt, but it is common sense that the state will not do it. What we have we have provided ourselves, and saved the state a lot of money."

"The splendid institutions of charitable character elsewhere in the city"—I refer to Scranton—"would have to shut their doors. If the state of Pennsylvania were to take them over it would have to appropriate a great deal more money than it gives to them every two years under the present system of state aid."

"The most of the hospitals and institutions that minister to the people are not state created, and never have been. They spring from the hearts of individuals or sets of individuals in the community out of pure and unselfish motives and are supported, in the main, by private gifts or community efforts. The aid they receive from the state is simply a lift."

"The question also arises whether the state could run the institutions more efficiently. It is to be questioned. Take our own community; if these institutions were not properly conducted they would be investigated and exposed. Furthermore, in the history of this state's institutions when there have been scandals or mismanagement, it has been almost invariably in state or publicly run institutions."

"Our particular community thus needed every hospital and other institution that exists today. Our people build them and if they had waited for the state, they would not have them. They have, truly, been founded in the spirit of private desire to promote the social well-being of the community, but regardless of what individual or individuals or what denominations were-inspired to found them, the fact undeniable and impressive is that they have not a private character but are, one and all, open to the public without regard to race, creed or color."

"The state has all the checks necessary to prevent undeserved appropriations."

It goes on, Mr. Chairman, and discusses the methods that might be adopted in managing these institutions, and continues:

"The state makes no appropriations except by approval of the legislature. The legislature is influenced by the State Board of Charities. Then there is the Governor, he wields the final authority,

and in the exercise of that authority he can reduce or eliminate appropriations that are greater than wisdom dictates or unjustifiable. Actually, there are few institutions that get anywhere near what they ask for or need and more often do they suffer actual deprivation and the scope of their usefulness is limited as a result, and that is not good for the community."

It concludes:

"The state will find that it will cost it more to provide substitutes for the institutions that would be compelled to abandon their work.

"The state will find that it will cost greater efficiency."

"The change is not necessary and that, if there were not other reasons, should prompt the committee on revision of the Constitution to reject the proposition."

Mr. REED. Mr. Chairman: I do not want to take up time in discussing the merits of this proposition, because I took my share of time last week. But I have made some figures which I would like to read as explanatory of what Mr. Alter and Mr. Stackpole have said. The total value of the properties of the hospitals in the state receiving appropriations is forty-six million six hundred thousand dollars. I am reading round figures. The total value of the homes receiving charitable appropriations is eighteen million seven hundred and seventy-seven thousand dollars. The total appropriations for the year ending June 1, 1918, for all purposes were forty-one million nine hundred thousand dollars. Of this two million seven hundred and two thousand dollars was for charitable hospitals, or about six and four-hundredths per cent of the whole, and three hundred and ninety-eight thousand five hundred dollars was for homes or similar charities, or nine-tenths per cent of the whole, and the same, practically the same, results for the year ending June 1, 1919. Of the appropriations for 1918 hospitals received from the state two million five hundred and ninety thousand dollars, and from other sources, seven million one hundred and sixty-eight thousand dollars, so that the state contribution was twenty-six and seven-tenths per cent of the total income of the hospital. In that same year the homes received from the state four hundred and eighteen thousand dollars, and expended four million and forty-nine thousand dollars, so that the state contribution was but ten per cent of the total maintenance. The total appropriation for the year ending June 1, 1920, which I have obtained from the advance sheets of the Auditor General's Department, was fifty-three million ninety two thousand dollars, of which three million two hundred and twenty-eight thousand dollars, or about six per cent, was for charitable hospitals, and five hundred and seventy-six thousand one hundred and forty-four dollars, or a fraction over one per cent, was for homes and similar charities. The total appropriations for the year ending June 1, 1921, were fifty million seven hundred and sixty thousand dollars, of which three million two hundred and twenty-eight thousand dollars, or about six per cent, was for hospitals, charitable hospitals, and five hundred and eleven thousand dollars, or a fraction over one per cent, was for homes and similar charities. I think that confirms what Mr. Alter said and what Mr. Stackpole read, and, as was said last week, that the people of the state are contributing the larger amount not only of the work, but of their substance, their money, and that is an aid to the state and not state aid to charities.

Mr. McCORMICK. Mr. Chairman: May I ask what proportion of that money was received from paid patients, and what proportion from charitable contributions?

Mr. REED. Mr. Chairman: I do not know with reference to that, I did not work it out. Of course, I can but it would take a good deal of work to work that out, but I presume roughly speaking about one-third.

Mr. GORDON. Mr. Chairman: It was four million eight hundred and ninety-four thousand dollars from paid patients.

Mr. FISHER. Mr. Chairman: I think I can answer the question from a memorandum I have here; for the year closing May 31, 1919, which is the fiscal year of the Board of Charities, the total income from all sources for that year to state-aid hospitals was nine million three hundred and thirty-two thousand seven hundred and fifty-seven dollars and four cents. Of this amount the state contributed two million five hundred and ninety-four thousand six hundred and twenty-two dollars and ninety-nine cents, or twenty-seven per cent; very close to the calculations made by Judge Reed.

While I am on my feet may I be permitted to make a survey of the premises so that we may have all the facts before us? We have heard about the amount of money raised, expended, and where it has gone. But who are the beneficiaries? How much work is being done in return for all this money? And after all, that is the final test of whether the money ought to be expended or not. Is it returning value received? I turn to the information that has been furnished by the State Board of Charities. From their report of 1918, I think it is, I find that those who have received benefits in homes for children and aged persons are eighteen thousand seven hundred and eighty people in the state. In various private hospitals there have been treated charitable patients to the number of eleven thousand four hundred and twenty-two. In institutions for weak-minded, that would come under, I think, state-owned institutions, so we will eliminate that. In institutions for the deaf and dumb, nine hundred sixty-seven. Institutions for the blind, three hundred thirty-two. I will go back to institutions for the weak-minded because that includes those treated and paid for in both state-owned institutions and in those privately owned and managed. The inmates number four thousand and fifteen. Now those are the people who are the beneficiaries. They are our wards. They are dependent upon the public. Those are all purely charitable patients. The way this matter is worked out is on the per diem basis, and taking all the information and data obtainable from the State Board of Charities, the number of free hospital days for charity patients for the year 1918 is one million four hundred and ninety-seven thousand five hundred ninety-five; in other words, approximately one million and a half hospital days, or one person out of every six in the state has been the beneficiary to an extent of one day in the hospital under free treatment. It is a work of great magnitude and we must think before we do anything that will strike down this benign work.

Mr. GORDON. Mr. Chairman: I would like to answer some of the arguments that were made last week and were made today in opposition to the resolution of the gentleman from Dauphin. I am glad to have had here the assistance of the Commissioner from Allegheny, Mrs. Miller. I am glad to have had it for two reasons; first,

because of the practical contribution she has made to the facts and figures, and then I am glad to have it because no one will dare to impugn her disinterested philanthropy and charity, or intimate that her opposition to the present method of the state government arises from a hard heart or want of human sympathy.

I was astonished the other day to have an opponent like Judge Reed resort to the argument he did. Of course, in these days of figures of speech from the late war words of military terminology are to be expected. But when a great question of public policy is under debate, one would not expect a gentleman of the learning and ability of Judge Reed to talk in King Cambyses' vein, and use words of opprobrium, and think they would pass as arguments. He said with more vigor and earnestness than he has yet used, responding largely to what I said, that he did not want the charities of this state Prussianized, and when he said that I really think he supposed he had made an argument. The gentleman from Indiana also made an otherwise excellent argument from his standpoint when he took the position and summarized his opposition to the policy involved in the resolution of the gentleman from Dauphin by saying, "Will you strike down these charities; will you turn over these institutions to become a political machine and take them out of the hands of the good-hearted people who now run them?" Well, now, I would like to call the attention of both of those gentlemen and of this Commission to the fact that the public education of the children of this commonwealth, the public school system, is under the absolute dominion and control of the commonwealth. Is it Prussianized by that? Is it a political machine on account of that? Is it not our pride? There was an allusion made by the gentleman from Allegheny, Dr. Thorpe, to the effect that Thaddeus Stevens, of the adjoining county of Lancaster, was the father of the common school system of Pennsylvania. He was something of a statesman and a good deal of a politician, but the public school system of Pennsylvania is in control of the commonwealth and her agents, and it is vaster by far in extent, in importance, in money involved, than the charities of the commonwealth, either under state control or those not. Over every schoolhouse there floats the national flag by virtue of an act of the legislature. It is there as a symbol; it is there as a symbol that every child may know that that institution is an institution of the state. It is a fortress at once and a temple; it is a fortress because it is erected against that ignorance which is the death of free institutions; it is a temple because it teaches an adoration for the fundamental principles of our government. At least it ought to do that.

Mr. ALTER. Mr. Chairman: May I remind the gentleman from Philadelphia that the public schools are community institutions, built and largely maintained by the people of the community out of their own means with aid from state appropriations.

Mr. GORDON. Mr. Chairman: They are absolutely controlled by public servants, elected and appointed according to law, and not one dollar of school-tax money goes through the hands of any private citizens for distribution, not one dollar. The Constitution forbids it. Now, if that emblem is good there, let me ask why it could not float just as becomingly and appropriately over state-controlled charities. Mr. Chairman, there is a principle of law which we all have heard often, and those who have been on the bench I have no doubt have

often quoted it, and that is that "Hard cases make bad law." It is difficult to discuss this question calmly in an atmosphere which smells of chlorine and disinfectants. It is very difficult to discuss it with the cot of the sickly patient before us, with the sufferers from pain around, and with a voice pleading for charity. It cannot be discussed in that atmosphere. It must be discussed in a different one. It is a question of policy and not a question of philanthropy. It is a question of whether the state is pursuing a course in accordance with the fundamental principle of sound state government or whether it is pursuing a course which is likely to lead ultimately to financial disaster. That is the question. There was a stage in this debate last week, when you, Mr. Chairman, in answering the gentleman from Dauphin, who said the argument against the use of the public's money for private charities was in contravention of the principles of law, you said to him, "There is no law against the Constitution: the people can pass what Constitution they please, and if they chose to give these moneys to privately controlled charity, they are not contravening any law." Well now, that was not a candid and I do not think a sound legal answer to the gentleman from Dauphin. There are certain fundamental principles even governing the formation of constitutions. There is one written in the organic law of the United States, and that is that every constitution must conform to a democratic scheme, a representative democratic scheme of government, and anything which would be adopted by a state which contravenes that would be invalid, invalid because it would be in contravention of the Federal Constitution.

Then again, this Constitution, and it is like every other constitution, has in it a Bill of Rights. There are certain fundamental principles stated in the Bill of Rights; most of them excepted and exempted out of the scheme of government which lies at the foundation of the state, and these cannot be disregarded. One of these is this, that the public money shall be used only for public advantage and that money which is derived from taxation shall be expended only by the servants of the people and shall not be farmed out for private expenditures. It is not stated in those words, but it is the dedication of certain principles in the Bill of Rights of the Constitution. What we are discussing here, therefore, is just a question of policy, not a question of whether one man's heart is bigger and takes in more of his fellow-creatures in their suffering; it is not a question of coal regions and emergency hospitals, where it renders great aid, or whether it is on the banks of Erie, and is very beneficial to the people there; that is not the question. The question is whether eight millions of dollars appropriated by the legislature shall be spent by the state itself through its officers, or whether those moneys shall be spent by private citizens commingling in a private fund where that money loses its identity and is spent by private citizens.

Now, Mr. Chairman, this leads me to make a few general observations on this whole subject of charities. The gentleman from Erie says that it is the light of modern thought and modern view which should govern us in what we should say as to amending this Constitution. I agree with that. What is the modern view? What is the modern view as to hospitals and hospital treatment? Why, Mr. Chairman, when this Constitution was adopted, away back in 1874, when the gentleman from Erie said there were about two hundred

thousand dollars appropriated in that year for private charities, hospitals were few; he gives us the number of them. There were not a score in all Pennsylvania. Now they are all over the state, and now they are not merely public charities, they are the agencies of the state through private and public means for curing mankind of his ills and for preserving and protecting his life. Why, it has become almost as fashionable now to go to a hospital and have a surgical operation performed as it is to go down to the seashore in summer. Lord Lister with his antiseptic surgery and all the various appliances of modern science have made the hospital a place that is looked upon now with favor. It is a haven in sickness and distress, not only for the lowly but for the rich. No man who has a serious malady and requires surgical treatment would think of staying in the confines of his home, especially if his malady was an infectious one. He would go to a hospital because he knows that he would get the best treatment there and would be most likely to recover there, and would be of less danger to anybody else there. Therefore, the hospitals have come to mean something entirely different than what they meant when this Constitution was adopted. There are hospitals conducted by surgeons, doctors, well-meaning people, the provision of places for those who have the money to pay for the beds, and the rooms and the nurses, and the medicine and the food. They will be found under the figures presented by the Board of Charities here, not as great charities, but as great modern agencies for the care of the sick, for modern surgery, for modern therapeutics, for modern rest, for modern science in the treatment of human diseases.

Mr. McCormick asked Judge Reed a very pertinent question in reading the figures supplied to him by the department. The gentleman from Dauphin said to the gentleman from Allegheny, "How much of that income is from paid patients?" Judge Reed said he could not tell him, it would take a long time, it would take a considerable time to find out. Now, it is written here at large and is easy to be found out. Let me read it to you. I have taken only the sums named on page nineteen of this report. Let me give you the figures that will bring these hospitals into view, clear view, as to what they are, as the report of the public charities will disclose. On that page you will find the source of these institutions, over two hundred in number, and you will find that the state gave two million five hundred and ninety-four thousand dollars in round numbers. Their paid patients gave to those hospitals four million eight hundred and ninety-four thousand dollars. Those institutions received from dividends and coupons, dividends and interest, which I suppose is from their endowments, six hundred and fifteen thousand dollars. They received from all other sources eight hundred and nine thousand dollars. Altogether their income was about nine million dollars. How much of that did these private charitable institutions get from charitable persons, outside of the state, and how much of that nine million dollars came from the big-hearted people who give that the poor may not be neglected? Of that total sum of over nine millions of dollars only one million four hundred dollars came from dividends, interest and all other sources. The state gave twice as much; the paid patients gave almost four times as much. The sums which came to these hospitals from the contributions of the benevolent, charitable and philanthropic would not amount to twenty

cents a patient for all the people of this commonwealth. It would not amount to fifty cents a person for all the adult persons in this commonwealth. We are told that we are striking down the charities that are engaging themselves in vast benefactions, and that we are piecing out the philanthropic mantle by putting some bordering on it. But that is not the fact. These figures show that these institutions exist and do their work, private and public, mainly, practically altogether by what the state gives them, and by what they get from private patients who go there as the patients of doctors and patients willing to pay, and patients who can pay for the hygienic and scientific surroundings of a great modern hospital. And what are these great modern hospitals for? Go into the German, now the Lankenau Hospital of Philadelphia; go into the Jefferson Hospital, the University of Pennsylvania; go west and go into any of those great hospitals, and what do you see? Go open-eyed and honestly through those hospitals, and what will you see? You will see hospitals which for the greater part are not open to public charity patients. You will see hospitals that are having certain hours and certain days when the poor and the halt and the maimed can go there for charity; you will see hospitals furnished in the very best way, with the very best type of modern scientific equipment, and you will see there private rooms, with private patients lying there, with well-attired and comely nurses in attendance, and you will see everything that will make the sick-bed less horrible, and can lighten the burden of pain. But the main part of that is paid for by the patient and is not public charity. The main part of that is what that institution stands for, what it was organized for. The busy physicians who run in and out of that institution, who take all their patients there, are what constitute the real personality of that institution. And so I could name, and so could my colleagues from Philadelphia, we could name hospitals which are the favorite ones of the great surgeons of Philadelphia. We could name them as the place where these doctors take their patients to be operated upon and where they have private rooms and pay their board; that is the principal service, the principal duty, the principal work of all those hospitals throughout the state. I therefore object and criticise the status they are put on in the first instance when they are said to have been created or existing for public charity. Primarily they are not. Primarily they are for the purposes I have stated. Now beyond that, since it has come to the point where the gentleman from Philadelphia says eight million dollars are appropriated by one legislature to these hospitals, I object to the commingling of that public charity and that private service. I object to an institution receiving public money that puts up the bars the greater number of days in the week to the poor patient, and are constantly down for that patient who is willing to pay and can afford to pay for the very beneficent and excellent service which those hospitals render. I object to the humiliation upon the citizen, poor though he may be, who is obliged to go there and be distinguished and humiliated by being a pauper even in the bed of a hospital. Eight millions of dollars appropriated for charity! That is big enough, big enough for the state to take cognizance of and appoint its officers to manage.

We are told here how much it would cost to take these institutions over. You could not take them over. You could not buy those in-

stitutions from those who maintain them or the greater part of them now. The profession wants them, scientific people want them, those interested in those subjects want them; and let me repeat, these hospitals are just as much an addendum to the life of the scientific, to the life of the rich, as they are to the relief of the poor. I do not know, but I venture to say there are gentlemen of this Commission who have some kin, near or at a distance, being treated in hospitals of this character, and are being treated there as paid patients because they are often the safest and best places they can go. They are always crowded. Now, Mr. Chairman, these institutions also have their rules of exclusion. There are certain diseases they will not take. There are certain forms of injury they will not take. Why is that? They will not take patients suffering from infection. They will not take those patients because their paid patients would be subjected to possible contagion. Their greatest benefit is in accident cases. Those they take in the main, just because a few policemen in a patrol wagon come with a clanging bell up to their doors, bringing in the man who is struck down in the streets by the trolley car or injured elsewhere. Those are the main cases they take. Those constitute the main character of the patients that are treated in those institutions now under consideration in return for the public money. Where are the other patients? Where are those suffering from nameless and shameful diseases? Where are the permanent invalids and incurables which those institutions reject? Where are they taken? They are taken to the poorhouses maintained by the counties and by the communities. Let me say that in the city of Philadelphia, the best hospital in that city is the one attached to the Philadelphia Almshouse; the best of them in all respects in the amplitude of its equipment, the high character of its surgeons, physicians and nurses in attendance, and ability of the treatment. And personally, if God should smite me with disease I would go to the hospital connected with the Philadelphia Almshouse today, and not to another. I repeat, therefore, that these institutions are engaged probably in other work, in other work than charity, and we are not helping it. This charity helps them out. The money we give them and the funds we send them there are simply so many contributions to that institution which enables its staff surgeons and physicians and nurses to get a certain amount of practice. It helps them out. They would not want to see a diminution in the activity of the hospitals, of those great institutions there. It was pointed out that at the beginning of this Constitution there were less than a score of such institutions, and about two hundred thousand dollars of public money paid to the institutions. Very well, let us see.

Think of it! What did we do before that? What did we do before that for charity? Well, we got along I fancy fairly well, but anyhow these things have grown up under the nurture of these appropriations. These institutions cry and cry for help. They grow in numbers and constantly want to extend their resources and to get money from the state for that purpose. The chain is as strong as its weakest link. I want to call your attention, and only because it is a type, it is typical of what can grow up under this system which has grown into a great abuse, those who are interested, please look on page 13 of this cumbersome book, and look at the institution the one next to the last, it is called the

Markleton General Hospital of Markleton, Somerset county. It received from the state eight thousand three hundred thirty-three dollars and seventy-one cents. It received from private patients two thousand fifty-nine dollars and fifty cents. And that is the total income; not one dollar of charity from any other source. No benevolent people established that institution, no man ever gave a dollar to anybody there for charity, but the state gave it eight thousand three hundred thirty-three dollars. Why? What was the persuasive eloquence of that institution that got that money from the state, although no citizen in all the commonwealth would give it a penny? We may moralize on that, and have our private convictions. And that is only one; there are others in that list to which institutions not one penny of philanthropy has come from any other source but the state. If you choose to look at the expense column you will see the large amount paid for salaries and wages. I do not know what that "gross" means, and I probably ought not to criticise that item because I have not the minute knowledge to enable me to do it, but I find an enormous sum spent for salaries and wages, not the other items of maintenance, but salaries and wages. This is why I mention this. There has been furnished here somewhere a calculation showing what it cost per week per patient of the charity patients of those who come to those institutions who were treated without charge. It runs all the way, if I am incorrect I hope some one will correct me, it runs all the way from five dollars to two dollars and sixty-one cents per day. In some cases it was higher, in some cases it was lower; I think it got down to two dollars and sixty-one cents per day for institutions not under state control. If you will look at those under state control you will find that the cost per day is very much less. I just note that in passing. And how was this two dollars and sixty-one cents per day arrived at? One would like to know how much of overhead exactly is in that calculation. One would like to know how much of the cost of maintaining this hospital was for private patients; who got the benefit of that splendid treatment; and how much of that overhead goes into this sum of two dollars and sixty-one cents per day. It is brought up to that price by some system of bookkeeping of which I have no knowledge, with the effect that it would appear that more is paid out for these charitable patients than is received from the state; but I should like to know how that calculation is made. It is an amazing proposition, for when the state pays out over eight millions of dollars for public benefits such as these, for charity, it is time to appoint a watchman to guard that money, it is time to do it through institutions which the state and the state alone controls. Economically this system is unsound. It is bad because it is so progressive that there is no end to it. It is bad because it strikes at a fundamental principle of democratic government which is that the moneys of the state shall only be expended by the officers of the state and for state purposes, and that the charity of the state should be put on the same foundation that the education of the state is put on. If you Commissioners would look at the part of the Constitution devoted to public education you will find that the public education is there placed under the sole dominion of the state. It cannot be transferred, and more than that the Constitution says that at least a certain amount of money must be expended every year for the state education and that there shall be no money, no part of the tax money

for education, devoted or used for any institution under sectarian control. It is too late in the evening for me to discuss that. I regret it has been brought into this discussion. I regret that these two things could not be considered separately. I should be very glad to have this fundamental principle decided separately and apart from the question of management. It has been said that this Constitution would be lost, this Constitution that we may propose here and send on to the legislature, if we stop contributing the money of the people to the people to be expended by people who are not responsible under the law, and not governed by the people of the state, and that it would be defeated for that reason. I do not believe it.

I want now to make an apology to an institution in Philadelphia. Last week I made some observations respecting the Presbyterian Hospital; I thought it was a recipient of the bounty of the state, and I used it for a comparison. I found since last week that the Presbyterian Hospital has not for some years received any money from the state and declines to ask for or to receive any money for conducting this charity. It is well indeed and is an excellent example. It is also significant, however, that no matter how much they may go wrong at first and how much they may go astray, those who are fed on the Westminster Shorter Catechism ultimately come back to the right path. Mr. Carson opened his remarks last week with a very unfortunate statement. He prefaced it by a quotation from the literature of romance, and it amounted to this, that every man started with his mind made up and you could not change his mind. I would not like to think that. I would not like to think, for instance, that the gentleman, the distinguished Attorney General himself, was beyond persuasion, and impervious to argument. I would not like to think that. I had hoped that even on this question his high legal attainments, his fine Americanism, his logical process of reasoning would come to the rescue of his heart and that his heart would not outrun his reason, but that reason would guide him and guide others in determining this question. What is there to affright? Nothing at all. It is not too big; it is small. I would not want to tie these institutions if I could. Mr. McCormick, in his amendment, made the time eleven years when these privately controlled and privately owned institutions should no longer get public money. In the meantime, he would reduce by a certain percentage what the state gives for charity, so that this taproot shall not be suddenly plucked up, and then by the end of ten years, ten years when the demand for charities will be greater, ten years when we want more hospitals than we have now, ten years from now the state will take them over probably under the plan now existing in the county institutions; if not, then by some other plan, conduct its own charities in its own way, and have the most modern and scientific hospitals, where, like the light on the altar, there always will be the sign that a welcome is there for the poor and that no one will be turned away until their day comes, but that it is an institution of the state, and that aid will be rendered to the citizens of the state in their exigent moments, when they need it, and in that institution all are equal because the state is the common mother.

Mr. McCORMICK. Mr. Chairman: I would like before we vote on this section to make just a few remarks. I do not think it is necessary for me to discuss the question of principle. Twice be-

fore this body Judge Gordon, in my opinion, has fully covered that ground. He has produced, in my opinion, an unanswerable argument on the subject of the fundamental question before us, and I have not yet heard it answered. I have been all my life, and my father before me, interested in private charities. My father was president of the Harrisburg Hospital, my brother is now president. I have been a contributor ever since I have been able to contribute. I have seen in this community in regard to these institutions receiving state aid, I have seen the charitable initiative killed. Out of a population of eighty thousand, or possibly one hundred thousand, I do not think there are more than nine hundred contributors to these institutions. When they were created, most of them, they were supported entirely by private contributions. I have here before me evidence that instead of taking the soul out of charities, out of these institutions, by putting these private charities under state control we will put the soul into these institutions, and we will be arousing a charitable awakening in this commonwealth that we have not had for years. I think I have got the figures here which will prove that. In 1890 (these figures are furnished by the Pennsylvania Charitable Association) they take ten institutions which show that in 1890, for instance, Adrian Hospital, Punxsutawney, had an appropriation of fifteen hundred dollars, and private contributions of one thousand dollars; in 1900, ten years later, they had an appropriation of sixty-five hundred dollars, and they received no private contributions; in 1910 they received an appropriation of eleven thousand five hundred dollars and they received private contributions of four thousand dollars. The Allegheny General Hospital, of Pittsburgh, received an appropriation in 1890 of eight thousand dollars, and in the same year received private contributions amounting to four thousand dollars; in 1900 they received an appropriation of seventeen thousand five hundred dollars, and in the same year received private contributions amounting to three thousand two hundred dollars; in 1910 they received an appropriation amounting to eighty-seven thousand five hundred dollars, and received in the same year from private contributions four thousand one hundred dollars. The Altoona Hospital of Altoona, received an appropriation of three thousand dollars in 1890, and in the same year received from private contributions the sum of two thousand eight hundred dollars; in 1900 it received an appropriation of six thousand dollars, and in the same year received from private contributions the sum of four thousand six hundred dollars; in 1910 it received an appropriation of twenty-five thousand dollars, and received in the same year from private contributions twenty-seven hundred dollars. The German Hospital of Philadelphia received an appropriation of two thousand five hundred dollars in 1890, and received from private contributions in the same year the sum of thirty thousand dollars; in 1900 it received an appropriation of seven thousand five hundred dollars, and received from private contributions in the same year the sum of six thousand eight hundred dollars; in the year 1910 it received an appropriation of ten thousand dollars, and in the same year received from private contributions the sum of one thousand dollars. The Gyncecan Hospital of Philadelphia received an appropriation of five thousand dollars in the year 1890, and in the same year received from private contributions the sum of three thousand four hundred fifty

dollars; in 1900 it received an appropriation of ten thousand dollars, and received from private contributions the sum of one thousand dollars; in 1910 it received an appropriation of fifteen thousand dollars, and received no private contributions in that year. The Homeopathic Hospital of Pittsburgh received an appropriation of three thousand eighteen dollars and seventy-six cents in 1890, and in the same year received from private contributions the sum of eight thousand five hundred dollars; in the year 1900 it received an appropriation of twenty-two thousand five hundred dollars, and in the same year received contributions amounting to thirteen thousand five hundred dollars; in the year 1910 it received an appropriation of fifty-five thousand dollars, and in the same year received from private contributions the sum of one thousand dollars. The Jefferson Hospital of Philadelphia received in 1900 an appropriation of five thousand dollars, and in the same year received no private contributions; in 1910 it received an appropriation of twenty-five thousand dollars, and in the same year received the sum of two thousand dollars from private contributions; in the year 1910 it received an appropriation of ninety-five thousand dollars, and in the same year received from private contributions the sum of two thousand five hundred dollars. The Reading Hospital of Reading, received in the year 1890 the sum of one thousand five hundred dollars as an appropriation, and in the same year received from private contributions the sum of three thousand dollars; in the year 1900 it received as an appropriation the sum of seven thousand five hundred dollars, and in the same year received from private contributions the sum of two thousand eight hundred dollars; in the year 1910 it received an appropriation of ten thousand dollars, and in the same year received from private contributions the sum of two thousand five hundred dollars. The Western Pennsylvania Hospital of Pittsburgh received an appropriation of twelve thousand five hundred dollars in the year 1890, and in the same year received from private contributions the sum of three thousand five hundred dollars; in the year 1900 it received an appropriation of thirty-five thousand dollars, and it received from private contributions the sum of three thousand nine hundred dollars; in the year 1910 it received an appropriation of sixty-two thousand five hundred dollars, and in the same year it received no private contributions. The Wilkes-Barre City Hospital of Wilkes-Barre received in the year 1890 an appropriation of seven thousand five hundred dollars, and in the same year received from private contributions the sum of nine thousand two hundred dollars; in the year 1900 it received an appropriation of twelve thousand five hundred dollars, and received from private contributions the sum of six thousand dollars; in the year 1910 it received an appropriation of twenty thousand five hundred dollars, and in the same year received from private contributions the sum of two thousand three hundred dollars. The York Hospital of York received an appropriation of two thousand five hundred dollars in 1900 and in the same year received two thousand one hundred dollars from private contributions; in 1910 it received an appropriation of ten thousand dollars, and in the same year it received no private contributions.

I think if you take the figures of 1919 and 1920 you will see that these facts are borne out, that the moment the state begins to appropriate to private charities, just that moment the charitably inclined

person ceases to make his contribution to that institution. Take yourself; it is perfectly natural; it is natural to feel that since the state is taking care of hospitals, why should I? And therefore, in answer to Judge Kelly, I feel that instead of doing what Judge Kelly thinks it is going to do, I think it would have absolutely the other effect. I have often talked with Moses Taylor about his hospital in Scranton. He was a classmate of mine, and his great joy and pleasure in that hospital is because their family is doing it, and it is a gift of charity. Judge Kelly knows and I know that if the amount of money now received from the bequest is not sufficient to take care of that hospital, if the Taylor estate is not in the position to take care of it, that the citizens of Lackawanna county will see to it that nothing is needed for that institution. I think, gentlemen, in addition to the argument so forcefully made by Judge Gordon, that in principle it is wrong, and no one can defend it, the right to legislate to turn over to private individuals this money to expend it as it is now expended. In addition to that I tell you you are killing private initiative in this state, and to my mind that is possibly the greater of the two evils.

We ought to consider the popular thought of the people of Pennsylvania. Gentlemen, a few years ago I had to go twice into the sixty-seven counties of Pennsylvania on a political errand. I canvassed this state. In every county I went I talked this proposition, and it was one of the most popular planks in my platform. I had more commendation on the position I took on that subject, I have heard from it from every direction, and I continue to hear from it, and I hear from it today. It is due to the injustice of the thing, and it is due to just those things you have heard here discussed. The inequality is brought before you by Mrs. Miller. I have a letter here from Mr. Francis A. Lewis, president of the Real Estate Title Insurance & Trust Company of Philadelphia. It says: "I have, for twenty-five years, been a member of the board of managers of the Episcopal Hospital in Philadelphia, which has never asked and never been willing to receive a state appropriation, so that our skirts are clear. At the same time a great injustice is done—here is a thoroughly first-class hospital, which has never asked for state aid and which, if it receives a legacy of \$100,000, is obliged to pay a collateral inheritance tax amounting to \$5,000, this money being put into the common pot and a portion, of course, distributed to hospitals for which it was not intended. I tried to get this remedied, but the state government said they needed the money; so much for that." It does an injustice there.

Gentlemen, as a Commission we cannot afford to go before the state on this proposition without giving the people an opportunity to be heard. How do you know it is popular? I have been all over the state, and I say it is not. Yet you say we cannot submit this question to the people in the form presented in my amendment. Let the people of Pennsylvania say whether they want the legislature to turn over their money into the hands of private individuals that are not under the control of the state. Because you have made up your mind that the thing is not a popular system, you are afraid to submit that question to the people of the commonwealth. How can this system go on? You business men, you know it cannot. It is utterly impossible for it to go on. Who is going to determine what institu-

tions are to get appropriations? Why not start another hospital here in Harrisburg, why not one in Cumberland county, why not start hospitals in those seventeen counties that do not have them, why not in Pittsburgh, Allegheny, Lackawanna, Wilkes-Barre and all the other places of the state? Who is going to say to them they shall not start hospitals by private representative citizens, doing a good work? What is to prevent them coming before you and getting appropriations? They will come and they will get them, and the snowball will roll on and on and get bigger and bigger. You will pass your limit. Some system or some method of distribution will have to be devised. Remember that our institutions are growing, and instead of giving them sixty per cent you can only give them forty per cent, and so one down the line. In the ultimate conclusion you are going to get exactly what happens under my proposal. It cannot go on. One more argument. The question of sectarian institutions, if this were adopted this amendment that I have proposed would put all these institutions under state control. Would that question come up? It is a question, gentlemen, and we have not time to discuss it here tonight. It is a great big question. There is the question of competition, and there is the question of where one institution gets it and the other does not, and it is just going to keep a long endless discussion and ferment in this state that should not be here. There is just one thing we can do. Let us do the thing that is right in principle and trust to the charitable people of this state to do the right thing and turn back this system into the community like we have done with our schools. Either it will be done as a private charity or as a state institution, or as a county institution, in which every citizen will have a vote and a voice as to who will spend the taxpayers' money.

Mr. FISHER. Mr. Chairman: I think we have covered every phase of this question. I think there is nothing new that can be suggested. I should like to answer some issues that have been raised here, but it seems to me they are now irrelevant. I think we are all ready for the question, and I call for the question.

On the question recurring,

Will the Committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee agree to the amendment offered by Dr. Thorpe?

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress.

ADJOURNMENT.

Mr. FISHER. Mr. Chairman: I move that the Commission do now adjourn until 10 o'clock tomorrow morning.

Mr. ENGLISH. Mr. Chairman: I second the motion.

Whereupon, at 6 o'clock P. M., the Commission adjourned until 10 o'clock tomorrow morning.

Senate Chamber,
Wednesday, January 21, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.
The roll was called by the Secretary and was as follows:

PRESENT—19.

Alter, Carson, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Perrine, Pinchot, Reed, Smith, Stackpole, Thorpe, Voll, Schaffer (Chairman).

ABSENT—5.

Connelly Cuyler, Sulzberger, Tyson, Warburton.

The CHAIRMAN. A quorum of the Commission being present, the Commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

ARTICLE III, SECTION 17.

The CHAIRMAN. The unfinished business of yesterday was the consideration of the report of Committee No. 1 on section 17 of article III, with the undisposed of amendment and substitutes to that section as reported by Committee No. 1. The Chair's recollection is that the amendment and substitute is the substitute of Dr. Thorpe.

On the question recurring,

Will the Committee agree to the amendment?

APPROPRIATIONS TO CHARITABLE AND EDUCATIONAL INSTITUTIONS.

Mr. PEPPER. Mr. Chairman: If it is in order I desire to offer a substitute for the pending proposal. Let me preface it by saying that it is an attempt to state a principle covering this whole subject of

appropriations for charitable, benevolent and educational purposes and laying the ground for a subsequent section in connection with the budget system by carrying the principle into effect through a sound administrative method. The substitute is as follows:

“Section 17. Appropriations for charitable, educational or benevolent purposes may be made to a corporation or association not under the control of the commonwealth, but engaged in work or service deemed by the general assembly to be for the public good; provided first, that such work or service conforms to standards of excellence prescribed by the general law or by an executive agency established by law; provided second, that no payment shall be made pursuant to any such appropriation in excess of the actual cost to such corporation or association of the public work or service done or rendered; provided third, that no such appropriation shall be made for the use or benefit of any educational institution which gives denominational instruction or of any institution which discriminates in its service on the basis of religious or denominational belief; and provided fourth, that every such appropriation shall be made by a vote of two-thirds of the members elected to each House. No such appropriation shall be made to any person or community, but this prohibition shall not affect appropriations for pensions or rewards for military service or for the retirement of judges or of employes of the state, of a state institution or of the public school system.”

If this substitute is seconded, sir, I should like to say a word in support of it.

Mr. FISHER. Mr. Chairman: I second the substitute.

On the question,

Will the Committee adopt the substitute?

Mr. PEPPER. Mr. Chairman: It will be remembered by the Committee that when the report of Committee No. 1 first came up for discussion I ventured to offer a substitute for its report, which was referred back to the committee and which was subsequently reported out by the committee without recommendation. Then a substitute was offered by the Attorney General which was subsequently withdrawn. Then a motion was made by way of amendment or suggestion by Dr. Thorpe, which is still pending, and now I am proposing a substitute for all those propositions.

In explanation of the resolution let me say the following things as briefly and as clearly as I can. The resolution reported out by the committee was criticised principally upon two grounds. First, that it was a recognition of the principle that the state might appropriate to associations and corporations not under state control in cases of charitable and benevolent and educational institutions. Second, on the ground that the departure from the language of the present Constitution which forbids appropriations to sectarian or denominational institutions was an unfortunate and dangerous departure. The first of those criticisms need no longer be considered because we have discussed the question of principle and we have decided, so far as the Committee of the Whole decides anything, that the principle heretofore followed is sound and is to be used in the future. There remains, therefore, the very difficult and delicate question precipitated by the criticism of the departure from the language of the Constitution on the subject of sectarian and denominational institutions. It seems to me, sir, desirable to change the present language of the Constitu-

tion on that subject for two reasons. In the first place, it seems to me that to describe an institution as a sectarian or denominational is to invite controversy as to the meaning of the description. I do no more on this subject than to refer to the argument of Judge Kelly. It seems to me to be quite unanswerable. Moreover, it seems to me unworthy that we should leave in the Constitution the word "sectarian" which, as I understand, is a word of reproach, never used by an organization to describe its own position, but used as a term of criticism or reproach by another organization which disputes its right to exist. "Sectarian" is somewhat similar to saying in Latin what you say in Greek when you speak of the schismatic; both terms imply that there is a whole which it was wrong to divide. And those who are described as sectarians or schismatics are thereby impliedly denied the right to exist. That is not the position which we should take in a constitutional document. The question of a universal church or particular subdivisions thereof is a question of ecclesiastical policy, not of constitutional law. I submit that we are making a great mistake if we perpetuate any religious terminology by constitutional enactment, which tends to cause ill-feeling and to stir up religious discord. Wherever it is applied, it is applied against the protest of those who are described. On the other hand, the term "denominational" is a perfectly descriptive but entirely colorless word. It simply means those religious groups which have a denomination or name. It is the proper word, it seems to me, to use as contradistinguished from the improper word "sectarian." So much for the reasons which have led me to make the hazardous venture of proposing a change in the language of the present Constitution. Coming now to the substitute which is proposed, I have this to say, that in my judgment Dr. Thorpe illuminated this discussion greatly when he called our attention to the mistake of considering the charitable, educational and benevolent institutions in lump instead of considering the case of the educational institutions as presenting a problem different from that of institutions not educational, but still within the charitable or benevolent class. In the case of an educational institution, the test whether or not it should receive an appropriation, assuming that the service that it renders conforms to standards, is whether or not it gives denominational instruction. If it is a parochial school of the Roman church or the Episcopal church or of the Presbyterian church, or of any denomination, it ought not to receive an appropriation, because, being frankly educational, the instruction being clearly denominational, the money of the state should not be expended to forward or promote such denominational instruction. On the other hand, if the institution is not educational, but is one of those charitable or benevolent institutions of the class to which orphanages, homes and protectorates and the like belong, it is not an educational institution at all except in the sense in which every institution that has the care of the young is taking account of education. There I say the test is whether the service rendered by the institution is freely given without discrimination on the ground of denominational or religious belief. Accordingly, sir, in dealing with that subject in the present substitute, the third proviso as read a moment ago will be recalled as being cast in these words: "provided third, that no such appropriation shall be made for the uses or benefit of any educational

institution which gives denominational instruction or of any institution which discriminates in its service on the basis of religious or denominational belief." So much, Mr. Chairman, for the reasons which have led me to suggest a change or departure from the language of the present Constitution, and so much for what I believe to be the sound consideration that can be devised in favor of this substitute.

Mr. CARSON. Mr. Chairman: You are using the words "religious service," Mr. Pepper, in its broadest sense?

Mr. PEPPER. Mr. Chairman: I am using it, sir, in the sense which is consonant with the same term as used at the beginning of the section.

Mr. CARSON. Mr. Chairman: In the sense of the benefits of its administration and not religious ritual or anything of that kind?

Mr. PEPPER. Mr. Chairman: Surely, oh, yes; not religious service or divine service, but public service. I think that is clear, Mr. Carson, if regard is had to the opening sentence of the substitute which is, "Appropriations for charitable, educational or benevolent purposes may be made to a corporation or association not under the control of the commonwealth, but engaged in work or service deemed by the general assembly to be for the public good," and then the term "service" is principally used throughout the resolution in the sense in which it appears. In the third proviso let us keep the same language, "discriminate in its service."

Mr. CARSON. Mr. Chairman: I think that would make it free from doubt.

Mr. PEPPER. Mr. Chairman: I think the suggestion is a most excellent one, and with your permission and the permission of the committee, may I add these words, "work or service" after the word "its" in the first proviso of the substitute? I come now, sir, to another point to which I am indebted to Mr. McCormick's very lucid discussion of this question. Mr. McCormick pointed out and embodied in his amendment the thought that there should be a constitutional declaration to the effect that the limit of appropriations, if you are to have appropriations at all, is the cost to the institution of the free public service which it renders. I ventured to disagree with his statement that compensation is the proper basis for determining appropriations. The word compensation is broad enough to include something over and above cost. It may mean some additional reward for the services rendered in excess of cost. I have proposed, sir, in the proviso that I am going to read again that those appropriations which we have under consideration shall have as their basis the willingness or desire of the commonwealth to make to a corporation or association not wholly under the control of the commonwealth an allowance not exceeding the cost to such corporation or association of the work or service done by it and deemed by the general assembly to be for the public welfare. And so the second proviso of the substitute has been phrased thus: "provided second, that no payment shall be made pursuant to any such appropriation in excess of the actual cost to such corporation or association of the public work or service done or rendered." I understand, sir, that that is the ideal which the State Board of Charities has before it at the present time. It is crystalizing by constitutional enactment that

conception of the function of the state and it leaves the matter of administrative policy for consideration when we come to a section amplifying the budget provision which I shall hope to have the honor to propose. So much for the two features of this substitute which differ from what has gone before. The provision respecting the standard of excellence has already been considered by the Committee, and you have by general consent approved. I do not mean formally approved, but I have not observed that it has provoked any debate. The fourth proviso, which deals with the two-thirds vote for appropriations for these purposes, is simply a repetition of what is already in the Constitution. The last sentence of the substitute is the same as the last sentence of the resolution reported out by Committee No. 1. Therefore, the two points brought before the Committee of the Whole by this substitute are these that I have specified. First, the adequacy of the way in which the substitute deals with the religious or denominational question; and second, the way in which the substitute deals with the basis of the appropriation.

Let me say in conclusion, sir, that when this substitute was first drafted it was in a slightly different form, and was intended to lay before the Commission a view on these matters slightly different from the view which has been taken by all the speakers during the discussion. I submitted the suggestion that I had in mind to a member of the Commission, whose judgment I value greatly, and decided not to take the point which I had in mind. In my judgment the question that we have been discussing so anxiously for so long is really not a question of appropriations to charitable and benevolent and educational purposes, specifically as such; in my judgment, the question is one of appropriations to the public service, to corporations and associations not operated for profit and not wholly under the control of the state. For one I do not think that it is the function of the state to engage in charitable work because it is charitable or benevolent. The function of the state is either by direct action or by appropriation to an agency selected by it to promote public work and service believed by the general assembly to make for the common good. It may be that the public service which is thus stimulated is incidentally charitable or benevolent when tested in the courts as trusts for charity and benevolence are tested; but whether that be so or not, the criterion for us to apply is whether or not the appropriations that we are making are for a public purpose, whether technically it be described as charitable or benevolent or not, and wherever the institution, corporation or association to which the appropriation is made is one that is not operated for profit. If those elements concur as to the conditions outlined in this proviso embodied in the draft, I think that they state a sound general principle, and safeguard its application. I had intended, as I say, to propose a substitute in these words: "Appropriations for public purposes may be made to a corporation or association not operated for profit and not under the control of the commonwealth, but engaged in work or service deemed by the general assembly to be for the public good," with the four ensuing provisos. But in deference to the criticism that has been made that that may be regarded as too radical a suggestion or is changing too suddenly a habit that has prevailed for a long time, I have

decided not to press it. Therefore, I submit the substitute in the form in which I have submitted it, and I want to record myself as being of the opinion that we are not really concerned with the charitable or benevolent nature of the enterprise, provided it is a public service, and provided the corporation which is rendering it is not operated for profit. So much for that. Before I take my seat I want to say this. It has been suggested that we amplify the religious safeguard by declaring that there shall be no appropriation to institutions in which denominational worship or denominational or divine services are held. I cannot give my assent to that proposal. It seems to me that wherever you have an institution in which worship takes place, where prayers are said or services held as a part of the life of the institution, that you must either make up your mind to make no appropriation to it whatsoever, or you must recognize that to make an appropriation to it upon condition that it eliminates from its life the service to which it is accustomed is really a proposal that there shall be removed from the institution the thing that is the wellspring of its service and of its willingness to work for the public good. I do not think that we should withhold appropriations from institutions of a religious character merely because they hold religious services. If chapel services or prayers are said according to the forms of the religious organization which dominates the institution, I do not think we ought to object to it. It seems to me that if we do we are, as I have said already, drying up the wellspring of inspiration and enthusiasm which accounts for the existence and efficiency of the institution. I think that to require an organization which has its method of religious self-expression to forego that self-expression as a condition of receiving state aid is a good deal like providing that you shall not have a head nurse in the hospital until she has first cut her heart out. It will not do. That is where the service comes from. So I take advantage of Mr. Carson's suggestion. It is from this source that the divine service comes and from that source that the public service has its inspiration. I am heartily in accord with the suggestion, however, and have attempted to safeguard it in the substitute proposal; I am heartily in accord with the suggestion that where the institution is an educational institution the state should not appropriate to it if it gives denominational instruction; and I am heartily in accord and have attempted to give it expression that where the institution is non-educational but exists for general and charitable purposes, such as an orphanage or a home, as the case may be, that there no appropriation shall be made if there is any discrimination whatever in the service or work based upon religious or denominational belief. I very much hope, sir, that it will be found that this substitute, with such modifications as the Committee may make, will meet substantially the views of those who believe that our present method is unsound in detail or that it is based upon unsound principle. It will be as acceptable as any measure of mine can be to those who supported Mr. McCormick's very clean-cut and illuminating amendment.

Mr. FOX. Mr. Chairman: I have not taken any part in the debate on this question heretofore because I had felt that my associates of the Commission were very much better fitted to discuss this question. I have, however, had the benefit of their wisdom now for several days, and while I agree with the distinguished gentleman from

Philadelphia who has just taken his seat that we probably settled the question of principle by the vote that was taken yesterday afternoon, no one who heard the very forceful and eloquent arguments made by my friend, Judge Gordon, or the equally lucid statements on the matter by Mr. McCormick, can fail to appreciate that there is a danger in this whole situation to which we cannot shut our eyes. There is, as Judge Gordon at one stage of his argument said, a danger that it may lead ultimately to financial disaster. I suppose that he meant by that that if we throw the door wide open that the charitable institutions of the state and the educational institutions of the state may multiply and that the application for aid may be so great that it will be impossible for the state to properly care for its institutions. Now, as Mr. Alter has pointed out, we already have a system by which there is a species of supervision and control by state agents. It has occurred to me that probably it would be wise for us to safeguard in some way this matter by stating in the language of the constitutional provision that it shall be under the supervision and subject to the visitation and control of the State Board of Charities, and further that the disbursement of the fund shall as now be made under direction of the Auditor General subject to such rules and regulations as he may impose. I feel that the time has come where the state is expending between eight and nine millions of dollars of its funds that the State Board of Charities should have its powers enlarged and should no longer be an organization where men are called to give their time and service without compensation and be able only therefore to give limited time and attention to the matter, but that they should receive adequate compensation. My thought is that it should be somewhat analogous to the Public Service Commission, that we should have a body of men who are experts in the supervision of these charities, and that, for example, before a hospital should be established in a town or in a city that expects to apply for state aid that that could only be done with the permission of the State Board of Charities, analogous somewhat to the certificate of public convenience which the Public Service Commission gives. Now, it may be that that is the thought that my friend, Mr. Pepper, had when he inserted in his substitute some executive agency. I do not know whether that was what he had in mind or not.

Mr. PEPPER. Mr. Chairman: In reply to the interrogation of Judge Fox, I should say that I had in mind that as one possibility of the solution of the problem of administration, but I did not think that it was wise to bind the hands of the general assembly by specifically requiring the creation of a commission with such powers as Judge Fox has indicated. It seems to me that that is a delicate question which has to receive separate consideration. The question whether or not you will create a department of charities or whether or not you will create a board with the same powers respecting these charities as the Public Service Commission in the case of corporations for profit engaged in the public service, seems to me to open a wide door to discussion on the question of principle. But I do agree that this language is broad enough to cover such action as Judge Fox suggests, that is, that the legislature under this provision might create such an agency as the Public Service Commission, and I say, in answer to what was the implication of his entire question, that the proviso on the subject of payment not in excess of the actual cost of service

is, it seems to me, an implication which makes the action of the Auditor General an absolute necessity in disbursing that appropriation. He can permit no payment except upon the basis of such statement and calculation of cost as carries the thing down to the smallest detail of practical accounting.

Mr. FOX. Mr. Chairman: I am somewhat inclined to the opinion that it would be better to safeguard this still further, by saying specifically that it shall be under the control, the disbursement of the money shall be subject to the supervision, review and approval of the Auditor General of the state. I understand that is what is done now, and I can see no reason why we should not say so at this time. On the question as to the language to be used with reference to charitable or educational institutions, I desire simply to suggest to my friend, Mr. Pepper, and I hesitate to do anything that would suggest criticism of what he has done, whether this language would satisfy the purpose better: "No appropriation shall be made to any educational institution in which the religious instruction is required to be of denominational character, or to a charitable institution where the privileges enjoyed therein are denied or refused to any person by reason of the religious belief or denominational connection of the person seeking admission thereto."

Mr. PEPPER. Mr. Chairman: Would the gentleman be willing to read that once more?

Mr. FOX. "No appropriation shall be made to any educational institution in which the religious instruction is required to be of a denominational character, or to a charitable institution where the privileges enjoyed therein are denied or refused to any person by reason of the religious belief or denominational connection of the person seeking admission thereto."—

Mr. PEPPER. Mr. Chairman: I should like time to consider that suggestion, because anything that comes from Judge Fox one wants to consider with the most sincere desire to agree with him if possible. The two thoughts that occur to me are these: In the first place, that in an educational institution the denominational instruction that may be given is not always or necessarily denominational *religious* instruction. It may be a denominational view of history; it may be a denominational view of government. I should think for myself that the safeguard was inadequate if it limited it to the case of denominational religious instruction. That is one thought. The second thought that I have is that it is safer on the whole to stand upon the well-known principle of non-discrimination than it is to undertake to define the ways in which the discrimination may be exercised, because if you do the latter, as suggested by Judge Fox, you may err from failure to take account of some unspecified situation in which the discrimination may be practiced. For instance, it is not, in my judgment, sufficient to provide that admission to the institution shall not be made the subject of discrimination on the ground of religious or denominational belief or connection. There might be free access to the institution, and yet there might be all sorts of discrimination in its administration which would be dangerous. I ask whether it is not safer on both points to leave unmodified the provision that there shall be no denominational instruction without limiting it to religious denominational instruction; and second, whether it is not safer to stand on the

principle of non-discrimination than to attempt to specify the particular way in which the discrimination shall not be exercised.

Mr. FOX. Mr. Chairman: I desire to say that Mr. Pepper has convinced me that his language is best.

Mr. CARSON. Mr. Chairman: May I ask Judge Fox whether he suggested as an amendment that the responsibility should be imposed specifically on the Auditor General?

Mr. FOX. Mr. Chairman: Yes; I had drafted this as a proviso which might be inserted in Mr. Pepper's substitute, if the Commission deem wise: "provided further, that the fund that is appropriated and paid a charitable or educational institution shall be disbursed under the supervision and approval of the Auditor General in such manner as may be required by the laws now existing or any subsequent enactment made by the general assembly." I offered that amendment as a substitute.

Mr. CARSON. Mr. Chairman: May I ask what is meant exactly by the approval of the Auditor General? Of course, I can understand that if there was an excess of expenditures over revenues that would be a purely fiscal situation, and the facts could be definitely stated, and no criticism of an injurious kind could be indulged in. But if there is an officer in the service of the commonwealth whose position is a difficult one, it is the Auditor General. Now, if he should be put in the position of apparently being charged with the duty of scrutiny in such a way that his decision was to control, the disappointed applicant finding that some other applicant had succeeded would draw injurious contrast, and the position of the Auditor General would be a very uncomfortable one. I do not think we ought to subject him to a pressure of that kind. I recollect while the budget system was under debate and it was suggested that the Governor should in some way exercise a power of discrimination, that it was held that that was a burden which a single officer should not be called upon to carry. It would be very unjust to put him into a position where very unkind and unjust critical remarks could be made and to put the Auditor General foremost in the position and have him take all the criticism and all the responsibility. It strikes me as a little too much pressure to put upon a man in a single office. Now, I thought that Mr. Pepper's language was uncommonly well advised. "Appropriations for charitable, educational or benevolent purposes may be made to a corporation or association not under the control of the commonwealth, but engaged in work or service deemed by the general assembly to be for the public good." That left it open for the general assembly by a general act to define the general services they did deem for the public good. Then comes the proviso that "such work or service conform to standards of excellence prescribed by the general law or an executive agency established by law." Would not these last words give ample opportunity for a legislature, after careful consideration and study of the question, to provide either a board of charities or charitable commission akin to the Public Service Commission which Judge Fox has intimated, rather than single out the Auditor General for the exercise of expert authority? Perhaps in the weakness of human nature he may be exposed to some temptation too strong for him to resist. But secondly, no matter who exercises the power, he is certain to invite a storm of resentful and perhaps indignant criticism, if he does not yield to their importunity.

I would be sorry to see the Auditor General put in such a position as that. I think he has too many duties to perform which expose him to this danger. I do not think he ought to be made a member of the contracting power of the state. I do not think he should be on the board of public works contracting for the building of a bridge or anything of that sort, for example, where he participates in the making of the contract, because he is bound some time later to sit in judgment on his own acts. He ought to be separate and act alone. I do not think he should be put in any such position as this to act as the official arbiter, so to speak, of the direction in which these appropriations flow.

Mr. FOX. Mr. Chairman: I would like to answer Mr. Carson and to say that I think that he has misapprehended the purpose of the amendment which I suggested. I am not seeking to impose any additional duties on the Auditor General other than those he now performs, and the language which I have used does not require that the Auditor General in advance, or at any time, consent to the appropriation. The language that I used was this, "and provided further, that the sums so appropriated and paid to such charitable or educational institutions shall be disbursed under the supervision and approval of the Auditor General in such manner as may be required by laws now existing or any subsequent enactment of the general assembly." That, as it seems to me, cuts out the second proviso which Mr. Pepper put into this substitute.

Mr. CARSON. May I ask Judge Fox, do you mean that after the funds have been appropriated, and after it has reached the hands of the fiscal officers of the institution, that the expenditure of that money is to be under the eye of the Auditor General?

Mr. FOX. Mr. Chairman: Just as it is now.

Mr. CARSON. Mr. Chairman: Well that makes him practically a sitting member of every board of every hospital in the state, which would very greatly overburden and overwork that officer.

Mr. FOX. Mr. Chairman: I think they do not do it so now. They send a representative of the Auditor General to all the charitable institutions in the state every three months.

The CHAIRMAN. There are no institutions that the state has which are more thoroughly audited than the schools.

Mr. CARSON. Mr. Chairman: Does the Chairman see any objection to imposing this additional duty on the Auditor General?

The CHAIRMAN. None, as I have seen the state work.

Mr. CARSON. Mr. Chairman: If that is the experience of a man like yourself, it would have great effect on my judgment.

The CHAIRMAN. The language may be modified in some respects and meet that condition concerning the Auditor General, and we could hereafter modify it. It occurs to the Chair that the thought embodied in Judge Fox's amendment is a good one.

Mr. CARSON. Mr. Chairman: Now, see how well Mr. Pepper has, in general terms, without going into detail, "provided first, that such work or service conforms to standards of excellence perscribed by the general law or by an executive agency establish by law." Now, that leaves it open to the legislature to establish its executive agency for the state supervision and disbursement of the fund; "provided second, that no payment shall be made pursuant to any such appropriation in excess of the actual cost to such corporation or association

of the public work or service done or rendered." That necessarily means the exhibition of that state accounting which Mr. Alter so well described yesterday, quarterly, for instance, of ascertaining the amount of the cost of the patients, the amount that it derives from private sources, the amount which it actually costs the state, which sum if it is outside of the appropriation cannot be paid, if within the appropriation is paid, but only *pro tanto*. It does not mean necessarily the exhaustion or unnecessary expenditure of the state appropriation. This language puts on the institutions the necessity of an exhibition of what it actually costs them to sustain those patients, or should properly be charged against the state appropriation.

The CHAIRMAN. If the Chair might offer a suggestion, the effect of Judge Fox's amendment, it seems to the Chair, would work out if you add these words "if they were rendered as shall be ascertained and determined by the Auditor General's office." That is what Judge Fox means to fix, that he shall be the determiner of them rather than some other agency of the state.

Mr. CARSON. Mr. Chairman: That is under the control of the legislature.

The CHAIRMAN. Necessarily it is through the expenditures after the appropriations are made that they are now controlled. Mr. Carson will recall that there is also another agency of the state that functions through the Attorney General's department, which function ought possibly to be a part of the Auditor General's department, that is the collection of money due the state by those persons who have dependents in state institutions and who are able to pay the cost of their maintenance. The Attorney General's office now has that in hand, and collects, as I recall, large sums, a million dollars a year on a per diem basis, because of the inmates in the various institutions who have parents or somebody else able to pay.

Mr. CARSON. Mr. Chairman: Now, I welcome every thought which can be given in order to make this perfectly simple so that the language will not be open to dispute on judicial construction, but it really seems to me that the more I read this the more I am convinced that the general excellence of Mr. Pepper's carefully chosen words becomes apparent. "No payment shall be made pursuant to any such appropriation in excess of the actual cost to such corporation or association of the public work or service done or rendered." That certainly invites the action of the Auditor General without putting him there in the forefront as the officer upon whom public or private odium may expend itself if he is singled out particularly as the responsible officer.

Mr. McCORMICK. Mr. Chairman: While yesterday the principle of the granting of state money to private institutions was voted down tentatively, yet I believe that this discussion here as we continue to discuss these matters, because they will be discussed in the public hearings of this body, I believe that that question will come up with a great deal of force before this body. My reason for saying that is this: I have been studying this thing from the practical side, from past experience, and have endeavored to look into the future. We have offered here an amendment this morning, which seems to me, as I said yesterday, is simply duplicating exactly what we have today. Now, let me analyze it. "Provided, that such work or service conforms to standards of excellence prescribed by the general law or by an executive agency established by law." We have

heard Mr. Alter's defense. He said we have the best possible system today, first the State Board of Charities examines and determines the standards of excellence, and submits to the legislature its recommendations, and the legislature, of course, only acts upon these recommendations.

You would never get a legislature to say that they did not, and then it goes on down the line until it comes to the Governor. Of course, it is all done on standards of excellence as fixed by general law. Is that not exactly what we have today? And the legislature which fixed that is the same legislature through these many years which has been carrying on the system and expressing it and enlarging it, and now if you pass this proviso do you expect to get any relief? Gentlemen, is not that camouflage? Gentlemen, are we changing the Constitution today? "Provided second, that no payment shall be made pursuant to any such appropriation in excess of the actual cost to such corporation or association of the public work or service done or rendered." Mr. Alter, who has a vast experience in the legislature, and we have heard other members here who sat in the committees of the legislature get up here and say that is exactly what is done; and still you have the Board of Charities and the Auditor General study these institutions, go over the accounts and have adopted a system. In the first place, gentlemen, we have it stated here on the record submitted by the Secretary so far as the State Board of Charities go, which will show that only about thirty-five per cent of the recommendations have been adopted. You have heard the Governor of this commonwealth announce that he would not approve the recommendations of the State Board of Charities, and yet the Governor was compelled to do it, and I believe that there has been an honest effort by the last legislature to attempt to reduce the inequality and to try to improve the methods of distribution, but we still have a vast percentage not accepted and their recommendations absolutely wiped out. Who did it? Why, the legislature did and that is the same body to which we constitution-makers are going to turn over the plan of distribution. I cannot see for the life of me how this thing is any different today than it was. You say, "actual cost." What is it? How did they arrive at the free days? The way they arrived at it is this. Free hospital days, it is not an actual record of the particular patients admitted or the number of days they remained. That does not determine the free hospital days. What determines it is this. It is an arbitrary figure. How arrived at? Why they take the total cost of the maintenance and they divide that by paid and free patients, total cost after deducting, and they divide it, after taking the income for services, paid patients and so on, and then they divide it by the cost per diem. That is your free hospital day. Now the cost per diem generally is the average cost per day for all of the patients, paid as well as free. According to that system, the Auditor General's expert goes to these privately controlled institutions. He does not control the books, does not control the expenditures themselves. It is a private charity and they expend it, and in most cases properly, but it is absolutely impossible without state control for the Auditor General to adopt a system and to see that this thing is carried out. The only possible way would be to say, "Gentlemen, we will refuse your appropriation next year."

Mr. PEPPER. Mr. Chairman: Just a moment. It is very difficult, it seems to me, to discuss the question of method when the question under debate is a substitute which attempts to state general principles. I ventured to say in supporting the substitute that at the proper time I would propose an amendment to the section dealing with the budget system. It will cover specifically the point that Mr. McCormick is now debating. I had such an amendment drawn, but it did seem to me that it would conduce to clearness if we could deal with the affirmative statement of the principle with its safeguards and leave to a later time the discussion of the very highly important and vital question of method to determine which Mr. McCormick is now debating. I want to say that that question will be before the Commission and the Commissioners will have ample opportunity to discuss it.

Mr. McCORMICK. Mr. Chairman: What I wanted to bring out was this, that to submit this question of method to the legislature, to any body which has been carrying out this system—

Mr. PEPPER. Mr. Chairman: May I say just in the interest of clearness, the amendment which I propose to introduce specifically provides against that thing and leaves it to the Governor, subject only to certain rights of legislative modification as will there appear. In other words, it is an attempt to include in the scheme of responsibility the responsibility for what the Governor shall consider the best method.

Mr. McCORMICK. Mr. Chairman: I am perfectly willing to waive my discussion of the method until this other amendment is introduced, but I do now want to answer the statement that has been made by some of the members here as to the system as it now exists. I feel this very seriously, and I do not think we can discuss this question when it comes to the method of distribution if we accept the present system as satisfactory. If it is satisfactory, we then deal with this matter in one way; if it is not satisfactory, we deal with it in another. I want to state here that if the system is a proper one, that there are no great defects, if it operates well, if the public money is protected, then I feel that I want to have brought out before this Commission the other side of it, if such side exists, and I believe it does. I think I can produce evidence. I think I have at hand statements by state officials, legislative journals, as to the iniquities of the system as it exists today. I believe that that is very important. If there is any doubt in the minds of any members of the Commission as to whether or not we have been working along proper lines today then that should be cleared up, because otherwise we could not be giving this matter the proper consideration. I will be glad to wait until Mr. Pepper's amendment to the budget system is introduced to see whether or not in my opinion it sufficiently protects the distribution of the state funds. I would like to ask Mr. Pepper a question just to clear my mind as to his statement in regard to the third amendment. Mr. Pepper, with your feeling and your sympathy with the spiritual development in the state, there is no question about it, I think every one of us feels that way about it, is it wrong in an educational institution, as was stated here as far as the effect upon the public mind and as far as the effect upon the people of the commonwealth is concerned, as to the difference between granting money to an educational institution as

stated by you and to orphanages and to places where the children are housed who are receiving state aid, and who, because they receive state aid, must carry on education in those institutions? That is one of the principle things. If any home assumes to take the responsibility of raising children, they must educate them, and they keep them there a series of years, and I want to get in my mind the difference between appropriating money to that kind of a semi-educational institution, because that as I see it is the important thing and the ordinary educational institutions referred to here.

Mr. PEPPER. Mr. Chairman: I am not sure we can clear up the difficulty. It is a very real difficulty, and one of which we are all aware. The thought that I have is this, sir. That there is fundamentally a difference between an institution which is educational in the sense that its work is entirely educational, as is the case of the parochial schools maintained by the Episcopal church, the Roman church and the Presbyterian church, which is frankly an educational institution in the sense in which our public schools are educational institutions; it does seem to me that in an institution which is educational in the sense in which a school is an educational institution, the test of fitness to receive state appropriations is whether or not denominational instruction is therein given. On the other hand, there are other institutions which, of course, as Mr. McCormick pointed out, have educational aspects in the sense that every home is the center of education. In institutions like orphanages and homes for the dependent, in which they are under the auspices of denominational groups, instruction of a denominational type may be an incident of the home life. It seems to me that in those cases the presence of that element of denominational instruction is unobjectionable inasmuch as it is merely an expression of the life and spirit of the institution which leads it to render public service.

I think, in other words, that the distinction that the Commission ought to have before it is between appropriations to any educational institution which, if it did not exist, the children would receive their instruction in the public schools of the commonwealth, and institutions which are educational only in the second and subordinate sense, and which primarily are homes or orphanages or protectorates. In their case I must state with the utmost candor that not only does it seem to me that the religious element which expresses itself denominationally is unobjectionable and ought not to be a disqualification, but that I should view with alarm the exclusion of that element from those institutions. I think to cut out of their life service of worship or instruction which is now characteristic of it is really to sap the vitality of the institution itself. It is just such a distinction that I am trying to make between the institution which in no sense parallels the educational system of the state, and the one in which the denominational feature is wholly paramount.

Mr. FISHER. Mr. Chairman: It seems to me that the discussion is running away from the matter now before the Committee. The proposition is the one submitted by Judge Fox, with respect to embodying in the Constitution a provision which defines the duty of the Auditor General with regard to appropriations made for the purpose expressed in this section. Now, the process was outlined yesterday by Mr. Alter, who is thoroughly familiar with the operation of the state government. The amendment offered by Judge Fox em-

braces what is now the duty of the Auditor General with respect to expenditures of all public money. I wondered why we should specify in the fundamental law as to charitable appropriations, and thus sever and distinguish that feature of his duty from the general duties of the Auditor General. There may be no objection to that, but it would make the law unchangeable in that particular.

This seems to me to be a serious question. If you adopt this amendment, the Auditor General must become the final judge of all questions with respect to whether or not the standards that may be established have been complied with or whether or not the provision of any acts of assembly which are now in force, or which may hereafter be enacted, have been complied with. Now, if that be the effect of it, it seems to me that it is open to objection. I know from my observation and experience sometimes an Auditor General, who is not always a lawyer, makes findings and rulings that do not stand the test of the court. It seems to me that we ought not to put a provision in here which would make him a final judge of such matters as may come before him, but that the way ought to be left open to appeal from his decision. It is only recently that a very serious question has arisen about the appropriation to some sixty-six institutions in the state by the last legislature. Now, would it do for us to make the Auditor General the final judge of such questions, from whom no appeal could be taken? It seems to me this is the real question involved in the amendment offered by Judge Fox. I merely offer this by way of suggestion. I would like to have the thought of some of these eminent judges who have been accustomed to interpreting the law.

Mr. REED. Mr. Chairman: I do not answer to the description, but I was going to get up any way. Mr. Chairman, it seems to me that we are sailing around in rarified air in an areoplane. I will come down to the practical situation. I do not believe it will appeal to the legislature if we submit a report in which in the forefront we do not trust the legislature to do anything. I suspect they will resent that, and after all we are subordinate to the legislature. Now Mr. Pepper's amendment, it seems to me, covers everything that is necessary in your Constitution in the way of a declaration of general principles. He provides that the work shall conform to standards of excellence to be established by either the legislature or some executive agency established by law. Then it provides that no money shall be paid out except in the way of compensation for actual public service rendered. Now, necessarily, that goes to the Auditor General, it is his business to see, and everybody concedes that he does see to it, that no money is expended out of the appropriation, no money is put through out of the appropriation unless it comes properly within the scope of the appropriation and the services performed shall be honestly and properly rendered. We have discussed this thing over and over and backward and forward. We are met with another discussion when the budget comes up, and with all respect to the eminent orators I would like to see us get a little way, so I call for the question on this amendment of Mr. Pepper.

Mr. VOLL. Mr. Chairman: So far as my mind can grasp Mr. Pepper's amendment the substitute will safeguard the system so far as it can be safeguarded, but I am not in agreement with it. I am in agreement with what Mr. English brought out yesterday, that this Commission is here for the purpose of studying comprehensively

and in detail the present situation in the light of modern thought and conditions, although he and I may differ widely as to what modern thought and conditions are; but my conception of this Commission's amending this Constitution is to eliminate those things that may appear to be a burden to the people, and are a burden, and will continue to be a greater burden in the future. That, as I take it, is the state aid to private charities. Of course I would substitute therefor the things that have been proven sound in practice, for instance, as the initiative and referendum, home rule for cities, with three methods of government, the manager plan, the federal plan and the commission plan. In accordance with what the legislature has to do, I would also, if we could get the lawyers and judges to agree, establish systems of municipal courts in this state whereby the great cost and delay would be largely eliminated, and where the judge would be given power to render judgment for labor performed up to one hundred dollars and which would permit of no delay in execution. Now, Mr. Chairman, I noticed yesterday that Mrs. Miller brought out some figures that were startling, and so did Judge Gordon. If the principle is right, we must continue it in practice, and where is it going to lead? Where are we going to stop? I remember that during the last legislature there was introduced a bill to place a special tax on industry for the purpose of providing salaries and raising the salaries of the teachers in this state. And I see here in the report that has been made to the Governor by the Bureau of Medical Education instances were numerous in which public corporations assumed the care of their employes, did so with partial aid from the state fund. That is an evidence of the abuse and where the money is really going. As Mr. Alter said yesterday, there is a system of administration which closely and carefully looks after the expenditure of this money. If that be true, these things here should not be happening. Suppose we tax industry, place a special tax upon it for any purpose whatsoever outside of the general tax, what does it mean? It means that industries in this state must decay. It means that the industries of this state cannot meet the competition of their sister states or foreign competition. Where are you going to raise revenue if this system is continued in practice? Where are you going to get the revenue to meet the sinking fund of the state? This system has been in operation in Europe for ages, and it is not successful. Wherever it is practiced to any extent there is a deadening of incentive, there is a lessening of activity, there is a fostering of poverty and a promotion of poverty, and the nostrums that have been prescribed by the different governments in the past as palliatives to alleviate the differences that naturally arise from this system have only brought them face to face with a political doctrine and action that has for its purpose the wiping out of private enterprise and initiative. It seems to me, Mr. Chairman, that self-independence, self-reliance and private initiative are the best safeguards for civilization and progress. If we stick to that in our government there will not be any danger to our democratic institutions in the future, but if we depart from that I believe there will be some danger.

Mr. THORPE. Mr. Chairman: Just a moment. Mr. Pepper's excellent resolution in substitute for the amendment before the Commission leads me to make an inquiry of him. Does his resolution adequately provide for sufficient inspection of these institutions

which receive state aid. I would be very much obliged if Mr. Pepper would enlighten me. I appreciate the remarks that have been made very highly, but I do not see here in this substitution that there is provided adequate inspection. The law might provide who shall do it, if it is done at all, but I do not read anything about that here. One thing more, Mr. Chairman, in this provision it is provided that no appropriation shall be made to any educational institution. I am not satisfied, Mr. Chairman, that an educational matter should be brought into this article. I do not quite get the force of the remarks thus far made. Of course, the Commission will judge best concerning this matter. As I understand, Mr. Chairman, the objection to a denominational school of any kind is that it is primarily inimicable, that there is a hierarchy of some sort. That is the fundamental idea. The appropriation shall not be made to a so-called denominational or church institution. It seems to me that that has been in the mind of several of the speakers, although I do not recall it was mentioned exactly in those words. I would be obliged to Mr. Pepper if he would state whether he is satisfied, and others are satisfied, that there is adequate inspection of these homes and hospitals and charities that are to receive this aid, for where the money goes, there it should be followed by careful inspections as to the efficiency of the service.

Mr. PEPPER. Mr. Chairman: I can state my own views. The views of other members of the Committee can be ascertained only through the vote. My own view is that the important point mentioned by Dr. Thorpe is adequately safeguarded in the first proviso; "provided, that such work or service conforms to the standards of excellence prescribed by general law or by an executive agency established by law." That means as it seems to me that the general assembly is given power to prescribe standards, either directly or through an agency which it constitutes, and take all necessary steps for seeing to it that the standards are actually conformed with. Anybody who has the right to prescribe standards and determine conformity must have incidentally the power to make such examination and ascertainment of fact, through visitation or otherwise, as are precedent to the determining of conformity.

Mr. GORDON. Mr. Chairman: At the risk of breaking the heart of the gentleman from Allegheny, I feel that I want to discuss this proposition of Mr. Pepper. I never believed that I would be called upon to discuss it in this age of democracy. I never believed that in Pennsylvania a proposition like this would ever be presented to a deliberative assembly. By our vote of yesterday we settled one and only one proposition, and that was the proposition contained in the seventeenth section of article III of the Constitution as it now stands.

"No appropriation shall be made to any charitable or educational institution not under the control of the commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the state, except by a vote of two-thirds of all the members elected to each House." Mr. McCormick's resolution, which was defeated, proposed to prohibit entirely such appropriations. This Committee defeated that. That was a vote, therefore, that this section shall stand as it stands now unless something further is done to allow appropriations to institutions not under the absolute control of the commonwealth. That was all we decided yes-

terday. Then Mr. Pepper comes along with a proposition that is intended to destroy another part of the Constitution and reverse its character entirely, and that is section 18. This is the section at which his resolution and proposed amendment is aimed. "No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes to any person or community, nor to any denominational or sectarian institution, corporation or association." Mr. Pepper's amendment, and he should be candid enough to state it, Mr. Pepper's proposed amendment is intended to take that out of the Constitution and to allow appropriations to be made to denominational or sectarian, educational or charitable institutions. Therefore, he is the mover in this matter. Forty years ago the people of this commonwealth adopted that provision which I have read, and which he wishes to destroy. They adopted this provision in the tenth article. "No money raised for the support of the public schools of the commonwealth shall be appropriated to or used for support of any sectarian school." There again the people forty years ago prohibited the use of the public tax money for educational purposes for the support of sectarian institutions. I suppose, therefore, Mr. Pepper will be able to adduce some public thought which has now become current and popular which calls for a change of it. I suppose perhaps the members of the Commission when they adopt that will do it with their eyes open. You will take out of this Constitution the provision that no appropriation shall be made to a sectarian or denominational institution for charitable or educational purposes. Mr. Pepper's resolution says this shall be done. He frankly admits that is his purpose, and frankly admits that he wants appropriations to be made to institutions so sectarian, so notoriously and ostensibly denominational, that they will hold their denominational worship and practice their religious systems in these institutions, educational, charitable and benevolent, which ask for money from the state. And he therefore is the man who wants to open up the Constitution and the treasury to denominational and sectarian institutions, and he has got some sort of argument on that. I would like to hear from him. I would like to have anybody present me the source from which he could say there is a change of public sentiment in Pennsylvania, so that the people desire that this prohibition of denominational or sectarian support shall be taken out of the Constitution. I do not believe he will find it. He supports it speciously. He has said in debating that question, and has made an argument based upon the charitable institutions, forgetting for the time being educational ones, if you take out of these denominational institutions the practice of their worship, of their denominational services, you will take the heart out of every charity of the commonwealth. Mr. Chairman, I would not like to be regarded even in this body as one hostile to religion and to religious principles. I was raised in a place that had religious principles and sentiment about it. It was the daily life of the household. I do not regret the impression and effect of that sort of training. There is nothing in my nature hostile to religion, even to the Christian religion, if I may come down to a specific designation of a sect. And therefore what I am now going to say is said not with any feeling of hostility or without proper regard for its value in the state, as an institution in the state, for its value in the conservation of law and order and

respect for established institutions, for compliance with decrees of court, and the mandates of executives, and for all those things that go to make an orderly and established state with all its blessings. I know that religion is important, but I would not want to use it as a cloak or subterfuge for an argument. It is said if you take the practice of denominational worship out of these institutions, you will take the heart out of the charity of the commonwealth. While he was talking I hastily looked over the names of the institutions, the hospitals that receive state aid, that are not under state control, having regarded to their names. I did not find a score of hospitals under this control in all this list of more than two hundred. The list begins on page eleven, and I find on that page but a single institution which by its name would seem to have its origin in religion, and that is the Columbia Presbyterian Hospital at Wilkesburg, Allegheny county, which receives nineteen thousand five hundred dollars. Take the next page. I do not find on all that page more than two that might be said to have their origin in religion, denominational or sectarian. The Episcopalian Hospital of Philadelphia, which asked for and got no appropriation; Fabiani Italian Hospital of Philadelphia, which got no state aid. There we have the Jewish Maternity Hospital of Philadelphia, receiving no appropriation from the state, and that is all on that page. I see no other name there indicating its origin. I take the same page and look down this list and find the Mercy Hospital of Pittsburgh, which I know to have its origin and support in religion, and there are three other Mercy Hospitals in other parts of the commonwealth. That would be five. Running still further down through the Pittsburgh list we find the Hospital of the Sisters of Charity, thirty thousand dollars, and the Presbyterian Hospital of Allegheny, which got twenty thousand dollars. Those are all that are on that page. I have not gone further, but have covered four or five pages. Of all the hospitals of the state, not one score of them are institutions indicating they are supported by religious associations. My figures may be wrong here or there a little. Mr. Pepper, under the cloak, so far as his arguments are concerned, under the cloak of finding it necessary that in order that the charities be maintained, wants to strike out of the Constitution the prohibition against appropriation to denominational or sectarian institutions and wants them to be avowedly denominational and sectarian, and to practice their peculiar forms of worships, to do everything but teach their inmates denominational or sectarian tenets. Teach! How broad that is! We teach through the eye; we teach through the ear; we teach through many other methods and channels than the mere organs of speech; we teach through symbols, we teach through music, we teach through many other things than the mere inculcation of didactical thought on theological or religious beliefs. Mr. Chairman, as I read that list, a score or over, say two scores of state institutions that possibly might be sectarian or denominational institutions, have asked for public support. Suppose this amendment is passed at this time, you open the door then to all those who are excluded now. You open the door to all real, frank, ostensibly sectarian denominations and they may come in and ask for appropriations. My friend Mr. Pepper's provision would enlarge this list beyond any single act that I can conceive of, or any single amendment I can conceive of.

What is the inhibition? The inhibition is that the denominational thought or system shall not be taught, and that religion shall not be a condition to the receiving of the public benefits. I say with candor, and measuring my words, that I do think that exception would not exclude any religious schools, benevolent or charitable institutions in the commonwealth of Pennsylvania. Not one. Mr. Chairman, think of it. Mr. Pepper in analyzing his amendment said that there might be denominational instruction if it was not religious. He said there might be denominational historical instruction. He was right about that. I can conceive that very well. I can conceive how in an institution supported by and managed by those of a particular sect or denomination, whose teachers were all of that faith, who probably might be technical teachers of that faith, and I can conceive how history might be so taught in that institution as to be most strongly denominational or sectarian, and how it might be against the views of the majority of the people of the commonwealth. We might as well speak with frankness on the subject. Mr. Pepper has been to an extent frank but he has not been wholly so. Let us suppose in some institution there was a period of history being under consideration in which the event of the Reformation was the subject of study. One denominational institution would teach those events in one way, would treat those great events as the emancipation of the human mind and the human soul from a certain control they were under, and would teach that principle of history by illustrations with which most of us are familiar. Another school would treat of that historical period in an entirely different way. They would show how the result of that period had taken the church out of certain forms of society and industry; the teaching of the church would show generally how there had been introduced into religion, according to their views, an independence of thought which resulted injuriously to the foundation, to the very foundation of religion. And you can imagine, all of us can imagine, how two schools of thought could treat that historical period in two different ways. Mr. Pepper admitted that he would exclude that, but who is going to be the censor of the schools? Who is going to be the censor of the schoolbooks and the teachers? Let me read his amendment that you may see in addition to what he said that he candidly wants to bring into being recipients of the money of the state, institutions which are avowedly sectarian and denominational that would teach and therefore give certain benefits. Now he didn't stop with the old definition of charitable, educational or benevolent purposes, but he said these engaged in work or service deemed by the general assembly to be for the public good. In his eagerness to define the denominational and sectarian he has introduced a phrase of still more dubious import, "work or services deemed by the general assembly to be for the public good." I can imagine a religious institution, a denominational institution, a sectarian one, an educational one, teaching art; teaching it by the method of pictures. I can imagine teaching those things not directly denominational which might be regarded for the public good. The truth is that there is very little, there are few departments of knowledge which if properly taught are not for the public good, except those which are positively vicious and not taught under proper guidance; but when in the hands of experts even such knowledge has the advantage of teaching methods of prevention. But what is not

for the public good which teaches and gives information? What might not be for the public good which taught respect for religion, symbols of religion? A school which was avowedly promoted for the purpose of, we will say, teaching a certain conception of the Godhead, which may be the doctrine of Christendom but which may not be the doctrine of certain other citizens and taxpayers. I presume, under the amendment of Mr. Pepper, these institutions could teach that. I do not believe I violate any confidence when I say in a conversation that I had with him he said frankly that there were certain fundamentals of religion which he would permit taught in educational, charitable or benevolent institutions not under state control which got public money to spend. Mr. Chairman, this matter is as old almost as the human race. It certainly is as old as the modern conception of the free state. It was the battle against any attempt to link up the support and prosperity of any church or any religious doctrine with the monetary resources of the state. The present Constitution which we are here to consider in its entirety, and say whether it needs change, divorces it absolutely in its Bill of Rights, and it is a prohibition against appropriations by the state to all denominations and sectarian institutions. I would keep it so. Mr. Pepper says he would deplore the severance of the state so far as its institutions are concerned; the practice even of certain denominational forms in these institutions supported by the state. Then he should have been deploring it for forty years, and he should have wept rivers of tears, for it has been for that period or more the standard of principle and doctrine that Pennsylvania announced through its Constitution and through all its laws. I deplore any attempt to break down those safeguards. I trust this Commission will not do it, and if it does it, let it do it with its eyes open, and its tongue and speech free. Let it not do it by words used in a double sense. Let it not do it by any pretense or qualification. Let it do it with language which needs no further qualification or interpretation. Let it say frankly that denominational institutions, practicing within their metes and bounds the particular worship and particular religious system that they stand for, may go on practicing them in institutions supported with state money, may purchase supplies while still practicing those particular forms. People may minister to those who come to their doors with money which comes from the public treasury, contributed not by that denomination alone, but by barbarian, Scythian, bond and free.

Mr. Chairman, I should be very glad to have this proposition met and determined here, met and determined indubitably without reserve or equivocation, so if this Constitution ever goes to the people they shall know what they are voting for and shall know that hereafter in this commonwealth, if Mr. Pepper has his way, schools may be maintained by public money wherein sectarian and denominational forms of worship are to be professed and to be practiced. Mr. Chairman, I hope it will not prevail. In order that it may be brought to a vote therefore which shall raise the point without doubt, I move instead of the section presented by Mr. Pepper for section seventeen the substitution of the section as it now stands in the present Constitution, "No appropriation shall be made to any charitable or educational institution not under the absolute control of the commonwealth, other than normal schools established by law for the

professional training of teachers for the public schools of the state, except by a two-thirds vote of all the members elected to each House." That will embody what was decided yesterday, nothing more. When we come to consider section 18 we will then have to determine whether we will strike out "denominational or sectarian" or not. I move, therefore, in place of Mr. Pepper's proposed amendment the language of section seventeen as it now stands.

Mr. McCORMICK. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

It was not agreed to.

On the question recurring,

Will the Committee agree to the substitute?

Mr. FOX. Mr. Chairman: It seemed to me on reading Mr. Pepper's substitute that the second proviso, "no payment shall be made pursuant to any such appropriation in excess of the actual cost to such corporation or association of the public work or service done or rendered," was defective in that it did not provide as did the previous proviso what agency should determine that question. I am persuaded, however, by the suggestion made by Senator Fisher that it is not necessary to do anything further, so that I therefore withdraw my amendment.

Mr. GORDON. Mr. Chairman: I move that the amendment substituted by Mr. Pepper be amended as follows: by striking out after the word "commonwealth" in the third line down to the word "good" in the fifth line, so that the section will read "appropriations to charitable, educational or benevolent institutions may be made to a corporation or association not under the control of the commonwealth. I move to strike out the word "such" in the fifth line and insert the word "the," so that that line shall read "provided that the work or service." I move to insert before the word "conform" the words "all such institutions" so that that line will read "the work or service of all such institutions conform." I move to strike out the word "the" before the word "general" in the sixth line; that is a mere verbal change. I move to insert in the ninth line instead of the words "in excess" after the word "appropriation," the words "except in compensation for," so that that line shall read "that no payment shall be made pursuant to any such appropriation except in compensation for the actual cost."

Mr. CARSON. I suppose, Judge Gordon, that is not more than the cost.

Mr. GORDON. I will come back to that later.

In line thirteen after the word "denomination" insert the words "or engaged in denominational religious service or worship in said institution," so that that line will read "provided that no such appropriation shall be made for the use or benefit of any institution which gives denominational instruction or engages in denominational religious services or worship in said institution."

Mr. McCORMICK. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: I am very glad to accept that portion of the amendment in which at a certain place it is proposed that the words "all such institutions" follow the words "work or service;"

and the omission of the article "the" which I think Judge Gordon said was merely a verbal change. I regret that I am not able to accept the two vital matters proposed by the amendment, one of them, as I understand it, striking out the affirmative statement of the principle upon which the appropriations are made, and the other adding the additional disqualification respecting the holding of religious services of worship in an institution to be benefited.

Mr. FISHER. Mr. Chairman: It seems to me that it would be wise to take these subjects up separately. I would suggest that there be some of them that we might all agree upon.

Mr. PEPPER. Mr. Chairman: I consider, sir, that the question to be decided by the Chair is whether the amendment is to be divided into different questions.

The CHAIRMAN. The question will first arise on the changes made by Judge Gordon's amendment to that part of the section as proposed by Mr. Pepper which ends with the words "public good." The Secretary will read the amendment proposed to that section so that the gentlemen will have it in mind. The Chair understands the amendment would strike out everything after the word "commonwealth."

The Secretary read the amendment as follows:

Amend by striking out after the word "commonwealth" the words "engaged in work or service deemed by the general assembly to be for the public good."

On the question,

Will the Committee agree to the amendment?

Mr. GORDON. Mr. Chairman: That would leave appropriations under the Constitution exactly as the Constitution now stands and would read "appropriations for charitable, educational or benevolent purposes may be made to a corporation or association not under the control of the commonwealth" and would leave out "engaged in work or service deemed by the general assembly to be for the public good."

Mr. PEPPER. Mr. Chairman: Before the vote is taken I should merely like to say what I omitted to say in my opening statement, that the substitute is drawn in an attempt to break away from what seems to me to be an unsound practice under the existing Constitution of limiting itself to restraints and statements of restriction, and omitting affirmative and constructive statements of principle. This is the part of the Constitution in which it is proper to state the basis upon which appropriations of the class under discussion may properly be made. It is the statement which is designed to show that the real test is whether or not the work or service in aid of which the appropriation is to be made is one which in the judgment of the legislature of the commonwealth is for the public good, supported by the qualification that the purpose shall be charitable or educational.

On the question recurring,

Will the Committee agree to the amendment?

It was not agreed to.

The CHAIRMAN. The next amendment by Judge Gordon, as the Chair understands, is in the first proviso in the same line. The Secretary will read the amendment.

The Secretary read the amendment as follows:

In the fifth line strike out the word "such" after the word "that" and insert in lieu thereof the word "the." Amend by striking out the word "such" in line five after the word "that" and substitute the word "the," insert before the word "con-

forms" the words "all such institutions," and strike out the word "the" in the sixth line after the word "by," so that the proviso shall read: "Provided first, that the work or service of such institutions conforms to standards of excellence prescribed by general law or by an executive agency established by law."

The CHAIRMAN. Mr. Pepper accepts that amendment and it will be embodied in the substitute of Mr. Pepper.

The next amendment suggested by Judge Gordon is to the second proviso. The Secretary will read the amendment as was suggested.

The Secretary read the amendment as follows:

Amend in line nine by substituting for the words "in excess of" after the word "appropriation" the words "except in compensation for," so that the proviso shall read: "Provided second, that no payment shall be made pursuant to any such appropriation except in compensation for the actual cost to such corporation or association of the public work or service done or rendered."

On the question,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: May I say that in drafting this clause I took into careful consideration the propriety of using the word "compensation," as the word had been used in Mr. McCormick's amendment. It seemed to me that it would not be the proper word to use because compensation implies a leveling of the balance between the things that are the subject of compensation. Here it is proposed that the appropriation shall never exceed the cost, but it may be that the general assembly acting upon the recommendation of the Governor will award a sum less than compensatory cost. Therefore, it seemed to me that the phraseology is wise in that it prescribes it shall never exceed the cost; it would be unwise to introduce the thought of compensation because that would bind the state authorities to appropriate up to the limit of cost.

Mr. CARSON. Mr. Chairman: That was the question that I presented to Judge Gordon before he had stated the full force of his amendment. I did not intend to interrupt him, but the word "compensation" would seem to carry an implication that if the appropriations were insufficient to meet the cost, a claim might be made on the part of the institutions for still more money in order exactly to equalize the cost to themselves of taking care of the patients of the state. I think "compensation" is dangerous, it might defeat this very purpose.

Mr. GORDON. Mr. Chairman: To meet that I substitute for my amendment the following language: "Except in compensation not exceeding the actual cost."

On the question recurring,

Will the Committee agree to the amendment?

It was not agreed to.

The CHAIRMAN. The next amendment suggested by Judge Gordon is to the third proviso.

The Secretary read the amendment as follows:

In line 13 after the word "denominational" insert the word "religious," and after the word "instruction" insert the words "or engages in denominational religious services or worship in such institutions," so that the proviso reads: "Provided third, that no such appropriations shall be made for the use or benefit of any educational institution which gives denominational religious instruction or engages in denominational religious services or worship in such institutions or discriminates in its service on the basis of religious or denominational belief."

On the question,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: One is always a little in doubt in debating a question with Judge Gordon, how far one ought to take account of suggestions affecting motive. I confess it is a little difficult if one does take account of such suggestions to meet the simultaneous intimation of too much candor and too little. The fact is that I have stated with all the frankness of which I am capable that my purpose is not to excise from the Constitution the safeguard which I understand to be the safeguard which the people wish to lay about their appropriations of funds when the question of religious or denominational control enters into the case. I am not in favor of excising from the Constitution the language which is there at present and substituting something that is inadequate. I am in favor of striking out the word "sectarian" wherever it occurs in the Constitution, for the reasons which I ventured to give before Judge Gordon came into the room. I am in favor of continuing in full effect the restraints upon appropriations to institutions in which the evils of denominationalism are present, but I do want to substitute for the present obscure section of the Constitution a provision that in the case of educational institutions objectionable denominationalism is denominational education or instruction, and in the case of other institutions that objectionable denominationalism is discriminatory service in favor of those holding particular denominational or religious beliefs. The amendment now proposed by Judge Gordon does two things that seem to me to be objectionable. In the first place it makes impossible the holding of religious services by any institution which receives state appropriations. In the second place it strikes out the safeguard which I would like to see retained as was developed in connection with the discussion in which Judge Fox took part. I should like to have the restraint upon denominational instruction left unmodified by the addition of the word religious, because it was pointed out to the satisfaction of Judge Fox that there may be objectionable denominational instruction which is not denominational religious instruction. I hope the amendment for that reason will not prevail.

Mr. McCORMICK. Mr. Chairman: I would like to amend Judge Gordon's amendment in this particular point by substituting section 18 of the old Constitution. And I do that for this reason, that I do not feel that it is proper for us to exclude from state institutions religious services as they are now held. There has been no criticism as far as I have heard in regard to these matters. The State Lunatic Hospital in Harrisburg is a case in point where all denominations have the right to hold services under proper direction. In other words, there is no discrimination, and there has been no criticism as far as I know of any evil existing. I think it is perfectly proper that we should have religious services of all kinds, of any kind that it is possible to have. And therefore I feel very strongly as does Judge Gordon in regard to the general principle to make it possible to carry out that system. I move, therefore, to insert section 18 instead of his amendment.

Mr. GORDON. Mr. Chairman: I propose this amendment because Mr. Pepper would strike out section 18, strike out all reference to denominational or sectarian institutions. If that remains I care not what religious exercises are held in any institution, because there will stand the prohibition against the appropriation of public money

to sectarian institutions, but that will have to go if Mr. Pepper opens wide the door to those appropriations. As soon as that is done there will be no prohibition against sectarian or religious institutions. After Mr. Pepper opens wide the door then I would like to have inserted a provision against appropriations to any institution whose peculiar forms of worship and religious exercises are carried on within the institutions which receive state money. Mr. McCormick's amendment meets my purpose, and I therefore second it.

On the question,

Will the Committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee agree to the substitute?

Mr. ALTER. Mr. Chairman: On the substitute proposed by Mr. Pepper, I have listened with much interest to the discussion, and I still feel, as I stated yesterday, that I have a preference for the substitute which was proposed by my colleague, Dr. Thorpe, as a substitute for section 17, leaving section 18 for the moment out of the question. The substitute that was proposed by Dr. Thorpe is in no way inconsistent with section 17 as it now stands in the Constitution. It merely makes some additional provision for the machinery under which the permission given to the legislature in section 17 may be carried out, and I think it provides probably all that is necessary in the way of machinery for carrying out that permission. Then Mr. Chairman, as my mind has worked upon this situation, I would leave section 18 as it is with the changes that were suggested by the committee in order to permit pensions to school teachers and judges, but so far as sectarian and denominational provisions are concerned I would leave it as it is, and that for this reason: I appreciate the arguments that were so ably made by my friend from Erie as to the possibly inappropriate language of section 18 by which it undertakes to exclude appropriations to denominational and sectarian institutions. And yet, Mr. Chairman, that is the language that was adopted by the very able men who framed the Constitution of 1873. I appreciate the suggestion by the gentleman from Philadelphia that it is not the most logical course in framing a constitution to leave to the decision of the supreme court the meaning of any provision, and that it is better as a rule to make your language as clear and free from ambiguity as possible. And yet, Mr. Chairman, this language in section 18 of the present Constitution has been in force for forty-five years, without so far as I know having occasioned any dispute which has brought the question of its interpretation before our supreme court. It seems to have answered very well for forty-five years. Now if we undertake in the draft which we frame to provide some different expression in place of the expression which now stands in section 18, my apprehension is that many good people of the commonwealth, many well-meaning people of this commonwealth, are likely to be so disturbed by this change that they will forget and ignore the numerous wise provisions which we hope to suggest to the people of Pennsylvania in different parts of this Constitution and give their whole thought and attention to the controversy, and battle over this change with all the consequences which heated imaginations may be able to supply as to the result of whatever change we make. On the other hand, Mr. Chair-

man, if we leave the language of section eighteen as it is, the experience of the past forty-five years indicates that there is no probability of any question or any difficulty or any controversy arising hereafter as to its meaning. The revision that we submit, or if as a result of our labors there is submitted to the people a revision of the Constitution, it can be considered and acted upon by the people free from any acrimonious controversy which might otherwise grow out of an attempt to change this section. Suppose some time in the future the question should arise as to the meaning of these expressions in section 18, and suppose that should come before the supreme court and the supreme court should decide then in a way unsatisfactory to any considerable body of our people, then what can be done? Why those who feel dissatisfied with the interpretation which the supreme court may put upon that language can propose an amendment to the section, and if there is a sufficient body of opinion behind that amendment to have it submitted by the legislature, then those who are for it and those who are against it, those who represent one view and those who represent the other, can go to battle on that one question, when the question arises. But taking everything into consideration, Mr. Chairman, I am more and more impressed with the thought that it will not be wise if we permit a controversy over this question, full of the possibility of heated controversy as it is, to go to the people as a part of what we are going to try to prepare for their consideration. The very debate which takes place in this Commission by broad-minded gentlemen is some intimation of the controversy and the disputes and the battle, as my friend, Judge Gordon, has used the term, which will take place if we submit to the people a revised Constitution containing the suggestion contained in the language of section 18.

The CHAIRMAN. The Chair's recollection is that Dr. Thorpe's substitute has not been disposed of.

Mr. ALTER. Mr. Chairman: No sir. I mention it simply as a reason for not favoring that of Mr. Pepper.

The CHAIRMAN. Then a vote will be taken on Dr. Thorpe's amendment.

Mr. PEPPER. Mr. Chairman: May I ask whether the parliamentary situation is not this, that Mr. McCormick's amendment having been defeated, and the one offered by the Attorney General withdrawn, the record was then left with the report of the Committee and Dr. Thorpe's amendment pending. I then offered a substitute for all propositions. The other proposals that have arisen have been disposed of, and I submit that the question now is upon my substitute if it is voted down, you can recall Dr. Thorpe's amendment.

On the question recurring,

Will the Committee agree to the substitute?

Mr. PINCHOT. Mr. Chairman: Might I suggest if it be agreeable to the members of the Commission after this long debate that the matter will not be settled by the vote that we take now. There is some confusion in my mind, because I have not made my mind up, and I have not yet succeeded in reaching a clear-cut decision on any of the propositions which have been offered. I want to follow out the suggestion Mr. McCormick has made and I ask whether it would be possible for him to submit to the members of the Committee informally or in any other way the statements to which he referred in his remarks this morning.

Mr. McCORMICK. Of what nature, Mr. Pinchot?

Mr. PINCHOT. You said you had figures, and so on.

Mr. McCORMICK. Certain evidence in regard to the weakness and evils of the existing system. What I had in mind was to submit the evidence of the people who have studied these conditions as they exist, and let the members of the Commission hear that evidence before they come to any determination in the matter. I have here the reports and statements made by various public men throughout Pennsylvania through the Pennsylvania charities organization, and I feel that both sides should be heard, both the Board of Public Charities as well as the men who disapprove of the existing conditions.

Mr. PINCHOT. I have misunderstood you and I withdraw my suggestion.

Mr. REED. Mr. Chairman: I would suggest to meet Mr. Alter's position we should avail ourselves of the benefit of Mr. Pepper's amendment down to the third provision. In that respect I think he had introduced something better than Dr. Thorpe, so that it would read as we have already adopted it down to the third proviso and then amended by inserting in place of proviso three, the words of section 18.

The CHAIRMAN. That has all been voted on, and voted down.

On the question recurring,

Will the Committee agree to the substitute?

Mr. ALTER. Mr. Chairman: Carrying out Judge Reed's thought I would like to amend Mr. Pepper's substitute by striking out everything after the word "rendered" in the eleventh line.

Mr. REED. Mr. Chairman: That seems to be something I understand. I will second that.

On the question,

Will the Committee agree to the motion?

Mr. PEPPER. Mr. Chairman: May I ask for light upon this question. Among other things stricken out if that resolution were to prevail is the provision that appropriations must receive the vote of two-thirds of the members elected to each House; also the restriction upon the appropriations to individuals and communities, and the other matter which follows at the end of it. I do not know whether it is intended that that shall be stricken out or not.

Mr. ALTER. Mr. Chairman: I would ask permission to have the motion stand thus: To strike out everything after the word "rendered" in line eleven, except the following: provided third" instead of "fourth" "that every such appropriation shall be made by the vote of two-thirds of the members elected to each House."

The CHAIRMAN. Strike out provision three and substitute the word "third" for "fourth" in the fourteenth line?

Mr. ALTER. Mr. Chairman: And what follows that fourth proviso—which follows what I read, in other words, strike out of this everything which intends to supply something that now is in the eighteenth section and consider the eighteenth section separately when we come to it.

Mr. McCORMICK. Mr. Chairman: I was told by Mr. Pepper when I was discussing this question that the weakness as I saw it

in this proposal was taken care of in the budget system. Of course, I am voting upon this question without any knowledge as to what the budget plan is to be. Therefore, until I know that, I, of course, must vote in the negative.

On the question recurring,

Will the Committee agree to the amendment?

It was agreed to.

On the question -

Will the Committee agree to the substitute as amended?

Mr. ALTER. Mr. Chairman: The last sentence of proviso four comes out.

Mr. PEPPER. Mr. Chairman, may I ask whether this statement of the parliamentary situation as just made is really the correct one. The resolution which I offered is a resolution to strike out sections 17 and 18 and to substitute for them the section which has been under debate. It is now proposed, as I understand it, to strike out the third proviso of my substitute, which has just been done, and also to strike out the concluding part of the substituted resolution. Then will it not be necessary to take some action to reinsert section 18? If that is not done, we have nothing on the record dealing with denominational or religious institutions, and if you do it, we must reconsider the adverse action already taken on that particular subject and proposal.

The CHAIRMAN. The Chair does not so understand the parliamentary situation?

Mr. ALTER. Mr. Chairman: I thought the amendment proposed by me had been adopted. I was just explaining what the effect of my amendment was.

Mr. CARSON. Mr. Chairman: Just for my own information in voting against Mr. Alter's suggestion, I thought I was voting against striking out proviso three; I did not know we had gone beyond that.

Mr. PEPPER. Mr. Chairman: The vote, as I understand it, which was taken a few moments ago, was a vote which as interpreted by Mr. Alter was in effect a reconsideration of previous action which resulted in a declination to include the language of section 18 in place of the third proviso of this substitute. In the judgment of some gentlemen who voted on the question, it was merely to strike out all of proviso three as it stands.

The CHAIRMAN. That was the Chair's understanding. To strike out all of proviso three as it stands. We have not voted on the amendment, which would strike out of Mr. Pepper's substitute everything after the words "elected in each House." That has not been voted on.

On the question,

Will the Committee agree to the amendment?

It was agreed to.

On the question recurring,

Will the Committee agree to the substitute as amended?

It was not agreed to.

On the question recurring,

Will the Committee agree to the substitute?

Mr. PEPPER. Mr. Chairman: May I ask whether it is an oversight or by intention that this section, if adopted, would exclude the power of the general assembly to appropriate for educational uses?

Mr. THORPE. Mr. Chairman: The purpose of the amendment was to eliminate the word "educational" with no other effect, and leaving the article on education when it should arise as a separate subject. The object was to separate the two kinds of appropriations.

Mr. FOX. Mr. Chairman: I move to amend by inserting the word "educational" after the word "charitable."

The CHAIRMAN. The Chair hears no second.

Mr. ALTER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee agree to the substitute?

It was agreed to.

The CHAIRMAN. The parliamentary situation is to substitute Dr. Thorpe's proposal for section 17 and leave section 18 undisposed of. Then the question would arise on what disposition is to be made of section 18.

COMMITTEE OF THE WHOLE RISES

The Committee of the Whole then rose and the Chairman reported progress.

RECESS.

Mr. REED. Mr. Chairman: I move you that the Commission do now take a recess until 2.30 o'clock P. M.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1.05 o'clock P. M., the Commission took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2.30 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour for the reconvening of the Commission having arrived, the Commission will be in order.

MINUTE ON THE DEATH OF ISAAC SHARPLESS.

Mr. THORPE. Mr. Chairman and members of the Commission: Under the instruction of the Chairman, I have prepared a paragraph to enter on the minutes concerning Dr. Sharpless.

The minute was read by the Secretary as follows:

The Commission on Constitutional Amendment and Revision appointed by his Excellency the Governor of the commonwealth, of which Commission Dr. Isaac Sharpless was an appointed member, pauses amidst its labors to contemplate the life and character of its eminent associate, and enters on its minutes its tribute to his memory, its sense of loss at his passing, and to extend its sympathy to his friends and family.

Mr. STACKPOLE. Mr. Chairman: I move the adoption of the minute.

Mr. REED. Mr. Chairman: I second the motion.

It was unanimously adopted.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports from committees at this time?

Mr. ENGLISH. Mr. Chairman: I desire to offer a report of the special committee on local government.

The CHAIRMAN. The report will be received.

For Report No. 17 see Appendix.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

ARTICLE III, SECTION 18.

The CHAIRMAN. The first section in order for consideration is section 18 of article III of the Constitution, the report of Committee No. 1 being that this section shall be amended.

The Secretary read the section as follows:

Section 18. No appropriation shall be made for charitable, educational or benevolent purposes to any person or community, nor to any institution, corporation or association in which there is denominational or sectarian instruction given, or which is not open for the admission of any persons without distinction as to denomination or sectarian beliefs. This section shall not prohibit appropriations for pensions or gratuities for military services, for the retirement of judges and employes of the state, or state institutions or for the retirement of employes of the public school system.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: Section 17 of article III having been disposed of, and it having been decided by the Committee not to combine sections 17 and 18, we have section 18 remaining for our consideration. I move that section 18 be adopted as it stands with the addition of the following: "except that pensions may be provided for the retirement of judges and employes of the commonwealth, and its agencies, including the public school system."

The amendment was read by the Secretary as follows:

Section 18. No appropriation, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes to any person or community, nor to any denominational or sectarian institution, corporation or association, except that pensions may be provided for the retirement of judges and of employes of the commonwealth and its agencies, including the public school system.

Mr. REED. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. FISHER. Mr. Chairman: I was just wondering, in the interest of English, whether it would not be a good thing to insert in the amendment after the words "military service" the words "and excepting also."

Mr. ALTER. Mr. Chairman: I realized in drafting it that probably the committee on style would change the position of the amendment. I drew it up as it is in order that it may be perfectly apparent that the present section in so far as it goes is entirely unchanged.

On the question recurring,
Will the Committee agree to the amendment?

It was agreed to.

On the question,
Will the Committee adopt the report as amended?
It was adopted.

PENSIONS FOR TEACHERS IN SEMI-STATE INSTITUTIONS.

Mrs. MILLER. Mr. Chairman: Before going into the matter of charities, there is one thing I would like to bring to the attention of the Commission for consideration later. On Saturday two teachers from the Allegheny County Deaf and Dumb Institution, which is a semi-state institution, came to me and asked if they could have any help from this Commission in securing pensions for teachers in those institutions. Heretofore it has been considered unconstitutional for them to come under the pension system, although they are teachers. In looking over these semi-state institutions, you will notice that there are several institutions for the deaf and dumb and also for the blind, and it would seem to me that it would be wise to take these institutions, these semi-state institutions and put them in our educational system, because the children that are coming to these institutions are children that we are not able to take care of in our public school system. Yet, through these institutions they are made good citizens, able to earn their own living, although handicapped by nature. These teachers receive eight hundred dollars a year and some of them less. They are facing the fact that unless we piece out the bare living wage we are giving them, they will have to go to one of the charitable institutions in their old age, and they want some redress for that condition. They must have more training even than the public school teachers, as they must have the special training to fit them to train the blind and the deaf and dumb.

The CHAIRMAN. If Mrs. Miller will bring this matter up at a later stage in the proceedings, I have no doubt that it will receive full consideration. The Chair knows it is a very broad subject because we had to consider it in an opinion that I drew in the Attorney General's department.

The next business before the Committee of the Whole is on the report of Committee No. 4. The report of this Committee, report No. 16, I think each member will find on his desk.

PROPOSED AMENDMENT TO BUDGET SYSTEM.

Mr. PEPPER. Mr. Chairman: Before we take up the report of that committee will it be in order for me to offer a proposed amendment to the section relating to the budget system which was spoken of this morning, in order that it may be before the Committee for consideration at a future session without any intention that it should be debated at the present time.

The CHAIRMAN. I think it would be well to do so. I would suggest that the amendment be read. As I recall it we have already adopted amendments.

The Secretary read the proposed amendment as follows:

Amend section 15, article III, as follows:

(1) Strike out the word "including" in the fifth line and substitute the word "excluding."

(2) After the word "submit" in the eighth line insert the following: "a proposal for such appropriation for charitable, benevolent and educational purposes as he shall think proper and shall also submit."

(3) After the word "budget" in the ninth line insert the following: "and a bill to carry into effect his said proposal."

After section 15, article III, insert a new section to be known as section 16, as follows:

"Section 16. In submitting his proposal for appropriations to charitable, benevolent and educational uses the Governor shall indicate the basis upon which the cost of approved work or service to be done or rendered by designated corporations and associations is to be computed and shall recommend an aggregate sum to be appropriated and distributed among said corporations and associations upon such basis. The general assembly may decrease but may not increase the aggregate item thus recommended, but shall in no case appropriate any sum to a corporation or association except to such as may be designated by the Governor and except in conformity with the method so recommended. Action upon the bill embodying said proposal shall be taken by the general assembly at the time that action is taken upon the general appropriation bill."

Mr. PEPPER. Mr. Chairman: The principal proposal that I have to make is of a new section to be section 16, but in order to lay the ground for the section, two changes are suggested in section 15 of article III as heretofore adopted.

Let me merely say, Mr. Chairman, that the purpose of treating this subject in a section severed from the budget section is two-fold. First, for the sake of simplicity of statement, and second in order that a way may be found for submitting the appropriation item for a two-thirds vote as distinguished from the majority sufficient for the purposes of the general appropriation bill. I move this resolution, and if it be seconded, ask that the matter lie over for future consideration.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. Is there any other matter to come before the Committee at this time?

If not we will take up the report of Committee No. 4.

ARTICLE IX, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article IX of the Constitution, the report of Committee No. 4 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 1. All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the general assembly may by general laws provide for the creation of taxing districts to facilitate public improvements therein, may by such laws classify the subjects of taxation for the purpose of laying graded or progressive taxes; and may assess and tax land, improvements and timber separately at either the same or at different rates, or may assess and tax either without taxing the other.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: May I say with reference to a certain portion of the section that the recommendation as embodied in this report is affected in an important particular by a conclusion that has been reached and is about to be reported out from the subcommittee of three appointed by the Chair to deal with the various subjects relating to municipalities. That committee finds that the creation of taxing districts for various purposes is more properly

a subject for constitutional provision under the head of municipalities than under the head of taxation and finance, and the provision will be submitted for the consideration of the Committee on the subject of the creation of taxing districts as a part of the general scheme of constitutional provision which affects municipalities and other political subdivisions of the state. Therefore, with the permission of the Committee I wish to withdraw from the proposed substitute the following words: "provide for the creation of taxing districts to facilitate public improvements therein may by such laws," so that after cutting out these words the sentence will read "but the general assembly may by general laws classify the subjects of taxation for the purpose of laying graded or progressive taxes" and the rest of it as printed.

On the question,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: I ought to say that, as appears from the report of the committee as printed on page two, the provision on the subject of the laying of graded or progressive taxes is reported by the committee without recommendation for the reason that a resolution to amend the Constitution in that particular has passed the legislature and is about to be submitted for the vote of the people next November. It seemed proper to Committee No. 4 to include the language of the proposed amendment as part of the section now reported and to postpone final consideration of the propriety of the language until we can act in the light of the popular decision on the subject. Therefore, we have reported the section as it would stand if this amendment were to be adopted. We make no present recommendation respecting it, thinking our deliberations will still be in progress when the general election shall have taken place.

The CHAIRMAN. It can be acted upon in the Committee of the Whole and final action would be taken following the election on this whole question in the fall.

Mr. REED. Mr. Chairman: It was understood in our committee that that matter of graded and progressive taxes was not the subject of serious consideration and debate, nor was there any vote taken upon it, and for myself, if there had been, I would have dissented and asked the Commission to test the question. As it is, I do not like to see that go in and be acted upon as though it was the sense of our committee that such a provision is proper. I for one am very much opposed to it. I think possibly one or two of the members of the committee might feel the same way. It has seemed to me that in view of the fact that the Federal government is imposing a graded income tax and a progressive inheritance tax and that in all probability such tax will be imposed for the next generation, and the Auditor General says to us that he has not only enough subjects of taxation, but that if necessary he could without any further legislation probably collect seven or eight million dollars more annually, that it would be unjust and work an injustice on the people of this state to impose on them a state progressive income or a progressive inheritance tax. When the time comes that the Federal government shall cease to collect these enormous taxes and the state of Pennsylvania needs the money, it will be an easy matter for the legislature to have the Constitution amended. Of course, I am pre-

suming now, I am treating it as though there was no such question before the people. I do not like to see this Commission express itself one way or the other on this subject that is coming up to the people next fall for a vote. If we adopt this today it is an endorsement and will be used as an endorsement of the proposition when it comes before the people next fall at the general election. I would move to amend this section by striking out, if I can make an amendment to Mr. Pepper's, "may by such law classify the subjects of taxation for the purpose of laying graded or progressive taxes," with the understanding that that is only tentative. Of course, if the people vote the other way next fall it would be a very simple matter to amend the provision finally.

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

Mr. PEPPER. Mr. Chairman: It seems to me that if we are going to await the decision of the people in regard to this question the logical position for us to take now is merely to pass the section as reported without action in respect to this particular provision of it.

I think Judge Reed is quite right in saying that we ought not to prejudge the action of the people as approving the provision as it stands, but I think it is also true that we ought not to prejudge that action by disapproving of it. I suggest that instead of striking out the provision, the resolution to adopt the section as reported by the committee contain in it a reservation with respect to the graded or progressive inheritance tax. That makes it clear that we have not adopted it, that we have not taken a stand upon the issue, but are simply waiting the popular determination. It seems to me that this is the more desirable way to proceed, because otherwise we must now enter upon a debate of the difficult and disputable question as to whether or not we are to strike out a recommendation which has been included in the report of the committee although without the recommendation of the committee.

SECTION 1 OF ARTICLE IX POSTPONED.

Mr. FISHER. Mr. Chairman: This amendment introduces an attempt to break up the uniformity of taxation that has existed under our former Constitution. One of the propositions is now before the people and will be acted upon by them at the next general election. Now, the principle that will be decided by popular vote, in my opinion, will be whether or not it is the popular will that we shall destroy uniformity of taxation. If the people say by their vote on this one particular feature that we shall do it, then we may consider that we have a mandate from them to consider the other methods proposed for breaking up uniformity of taxation. If the pending amendment is defeated it will clearly indicate to us the popular will to allow our uniform system to remain undisturbed. It seems to me that it would be wise that we defer consideration of the entire section; and I would, therefore, move you that further consideration of this section be postponed.

The CHAIRMAN. I would like to know where that would land the subsequent section that has been reported.

Mr. PEPPER. Mr. Chairman: That action would be entirely agreeable to us. I think I can speak for the committee to that effect if this may be done without prejudice to an adequate consideration of the ensuing section. There is one matter which I think Judge Kelly would like to bring to the attention of the Committee in the way of an amendment to the section, and if that amendment should be introduced and were to be incorporated in the section and then if the whole section as amended were to lie over for consideration, it would seem the orderly course to pursue.

Mr. KELLY. Mr. Chairman: The matter that I have in mind arises in the last clause, that is the clause which follows the semicolon in the fourth line from the bottom, "and may assess and tax land, improvements and timber separately at either the same or at different rates, or may assess and tax either without taxing the other." It seems to me that there should be inserted after the word "improvements" the word "minerals." In other words, in making this provision that the legislature may separately tax improvements from the land itself or the timber from the rest of the land itself, that it would be better to broaden it sufficiently to make it constitutional to separately consider the taxation of minerals, and I call the chairman's attention to that, and I think there is no objection from the committee that has that work in hand. I, therefore, second the motion to postpone.

Mr. PEPPER. Mr. Chairman: The committee will accept that recommendation.

The CHAIRMAN. The committee having accepted that suggestion, those words will be incorporated in the report of the committee.

On the question,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE IX, SECTION 2.

The CHAIRMAN. The next section in order for consideration in section 2 of article IX of the Constitution, the report of Committee No. 4 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 2. The general assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity; but in all cases in which exemption is claimed for property used wholly or in part for educational purposes on the ground that the same is an actual place of religious worship or a purely public charity, the exemption shall be allowed only where the language of instruction is English and where the educational standards are at least as high as the standards of public schools of a similar grade. All other exemptions shall be void.

On the question,

Will the Committee adopt the report?

Mr. FOX. Mr. Chairman: I would like to ask the chairman of the committee what is the purpose of having the provision with respect to the instruction in English?

Mr. PEPPER. Mr. Chairman: It was represented to the committee, and the information was believed by us to be correct, that there are a number of institutions in different parts of the commonwealth where exemptions of property are asked in cases in which the property is a place of religious worship, but where the property is in part used

for giving instruction, and that instruction in the institution under consideration is given in foreign languages. I do not mean that foreign languages are taught, but that the language of instruction is not English, and the principle which the committee desired to favor was that the privilege of exemption in cases where it is otherwise applicable is earned only by institutions which are giving their instructions in English and are not engaged in perpetuating a foreign tongue.

Mr. FOX. Mr. Chairman: A further question. Is it the understanding of the chairman of the committee that where religious services are actually conducted in a foreign language, conducted in a particular church for example, that would not prevent the exemption of that church?

Mr. PEPPER. Mr. Chairman: No, sir. It is not our thought that that would be the case, because the language is, "but in all cases in which exemption is claimed for property used wholly or in part for educational purposes on the ground that the same is an actual place of religious worship or a purely public charity, the exemption shall be allowed only where the language of instruction is English and where the educational standards are at least as high as the standards of public schools of a similar grade." In other words, our thought is that there are cases in which an institution is really educational but claims exemption because its property is used wholly or in part, as an actual place of religious worship, and the exemption is granted on that ground. We wanted to safeguard the ground of exemption in that class of cases by providing for an adequate measure of scholarship and that the language of instruction should be English. We do not feel, however, that there is any danger of that being considered as depriving an actual place of religious worship of its right to exemption merely because its services are conducted in a foreign language.

Mr. THORPE. Mr. Chairman: May I ask Mr. Pepper whether there would be any difficulty arising in such a case as this? I know an instance where the instruction in the parochial schools is partly in English and partly in German, and the other services are in German in that parochial school. And I would ask whether that exempts on those grounds.

Mr. PEPPER. Mr. Chairman: I am saying for the committee, sir, that their understanding in making this recommendation is that the exemption will not be allowable except where the language of all instruction is English. As I said, we are not attempting to raise any question about the propriety of teaching foreign languages, but there is a difference between instruction in foreign language and the language of instruction used in the institution, and our recommendation is that the language of instruction in the institution must be the English language in order that that institution may claim exemption successfully.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE IX, SECTION 4.

The CHAIRMAN. The next section in order for consideration is section 4 of article IX of the Constitution, the report of Committee No. 4 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 4. Except with the approval of three-fourths of all the members elected to each House, no debt shall be created by or on behalf of the state for any purpose other than to supply casual deficiencies of revenue not exceeding one million dollars, repel invasion, suppress insurrection, defend the state in war, improve and rebuild the highways of the commonwealth, acquire land within the commonwealth for forest purposes, or pay existing debts.

On the question,

Will the Committee adopt the report?

Mr. PINCHOT. Mr. Chairman: May I say just one word? Then I will stand out of the way. I think you are all familiar with the arguments on the subject in question in most respects, and I merely want to call attention to the fact in the purchase of forest lands the state does at one time two things. It not only provides against the famine in timber already begun to be felt in our state through the excessively high prices as to forest products; but, at the same time, it makes an investment which will become remunerative. Drawing the distinction between the forest land and the construction of roads, the money expended for roads is repaid in the conveniences to the traveling public and in the economic advantages which follow them; but the purchase of forest land has an additional character which might be represented in the case of roads, if the roads should from time to time spawn automobiles which the state takes and sells. There is a double reason for it. And because of the very critical situation in this state I believe there is a reason for haste, not undue haste, but reasonable haste which would be indicated by a bond issue, and securing as early as possible five millions of devastated acres in the state rather than follow the slower process of annual appropriation. Nevertheless if the legislature should prefer the slower process it could still do so under this provision. Throughout the whole world it has come to be seen by every civilized government that the only forest that is primarily safe is the forest in the hands of the state itself, and for that reason it has become necessary for all civilized governments to substantially acquire property in forest lands. I want to give just one illustration of the importance, I might say of the need. We have in this state about eighty million tons of anthracite coal. It costs for the lumber necessary to produce that coal about ten cents a ton. Practically every bit of the wood required comes from the south; very little of it is produced in Pennsylvania at all; and yet we know that in about ten years, according to the estimate of the United States Forestry Service, the south will be cut out. After that is gone the only considerable supply for the anthracite coal mines comes from the far west. We are already importing large quantities, very large quantities of timber from the Pacific coast to the Atlantic coast to Philadelphia at the present rate, being about seventy-eight cents for one hundred pounds. For this reason, Mr. Chairman, and for many others, I trust that this amendment including the provision for a bond issue for the purpose of purchasing forests may be passed.

Mr. GORDON. Mr. Chairman: I should like to interrogate the gentleman. I should like him to state just what the condition of the forest land is now controlled by the state, if he knows; if he can inform this Commission what is the condition of the forest land now held by the state which will be probably taken by bond issues under the amendment we have now before us.

Mr. PINCHOT. Mr. Chairman: In answer to Judge Gordon, I might say that the five million acres of which I have been speak-

ing are now in private ownership and completely desolated. The state owns about one million acres of forest land. I understand, Judge Gordon, the condition of the state land, every bit has been burned over, practically all of it was devastated before it came into the hands of the state. On the whole, it is in bad condition and the unfortunate part of it is that it is now being devastated still more in the name of forestry. However, I can see no reason to oppose the ultimate acquisition of additional state land because of the very unfortunate management of the lands that we have now. Does that answer your question?

Mr. GORDON. Mr. Chairman: In particular what I would like to have the gentleman address himself to is this proposition which we have under consideration, which contemplates the acquisition of additional forest lands for the state. I would like him to point out whether the acquisition of state lands by the state has been advantageous, and therefore I ask him what the condition of the present forest lands is in possession of the state; what remedy, if any, he has for a condition which would seem to present nothing encouraging with respect to the future. I am in accord with the general idea, and I presume the Commission is; but he is asking the state to acquire additional land, or provide the means for it, and I wanted to know, therefore, how the state had treated its present acquisition of forest lands, whether there was any hope in the present state management to stop the devastation he points out.

Mr. PINCHOT. Mr. Chairman: If I believed that the management such as the state forests have had in the past few years would continue, I should strongly oppose the purchase of any other forest lands by the state, because of the very notable mismanagement from which the land has suffered.

Mr. CARSON. Mr. Chairman: Does that mean that the timber land is burned?

Mr. PINCHOT. Mr. Chairman: Not particularly against fire. The laws which could have been exercised by the Department of Forestry to prevent fires have not been sufficiently used, and that forest devastation is now going on on these lands under the guise of forestry; in other words, the cutting which is now being done on state lands is of such a nature as not to preserve them. But I am very glad to say that is merely a temporary matter and one which I am sure in a great subject of this sort can be disregarded. In other words, I do not believe that the incompetent management of the Department of Forestry at this time should be allowed to stand in the way of great public improvement of this sort. I have been naturally more or less familiar with forest matters in different parts of the world, and I never saw in a number of years of experience any parallel case to this; and therefore I am sure that we may assume that the evils are merely temporary, and can be disposed of. As a rule, as an almost unbroken rule, the management of state forests, natural forests, government forests, by the organizations which have them in charge, both in this country and all over the world, so far has been admirable; and the fact that for the time being Pennsylvania state forests are suffering from a different kind of management, I am sure should have no effect whatever in preventing a great project of this kind. The one is a permanent improvement and the other is a temporary misfortune.

Mr. GORDON. Mr. Chairman: I should like further to interrogate the gentleman. I would like to know to what the present condition of the state forests in this very wasteful management is due. What is the remedy for it?

Mr. PINCHOT. Judge Gordon, the remedy is extremely simple. The remedy is to put a man who knows his business in charge. /

Mr. GORDON. Inefficient management then?

Mr. PINCHOT. Yes; it is a case of incompetence in the management of the Department of Forestry from which the state has suffered and which has been long continued, but I think we need not count upon its being permanent.

Mr. GORDON. He might die.

Mr. PINCHOT. Yes; and there are other ways in which a change might come, but what I am particularly anxious to emphasize is that this single unfortunate case in this state ought not to be allowed to stand in the way of the policy which is universally approved.

Mr. CARSON. Mr. Chairman: I rise to enlighten my own mind on the subject, if Mr. Pinchot will allow me to ask one or two questions. I recall that I received from time to time through the post-office little bulletins issued, I think, by the Forestry Department, and accompanied by illustrations, and interesting reading, which I have not the special information to discuss. I had formed the impression from fire towers on hilltops, the cutting of fire lanes through the forest, and the provision of fire extinguishers carried on the backs of mules, carrying barrels of water, and the study of the topography of the region, and with the wind in a given direction, that the forester from his tower could signal the exact point where it was required to check the conflagration, either by backfiring or by some other means of arresting the spread of the conflagration. I also noticed from time to time pictures of extensive replanting, where thousands and thousands of acres of land would be resown with timber which was considered appropriate to the soil, either pine forests or oak or something of that sort. I have gathered from what you have said that, instead of protecting our forests, by pursuing an improper system we really are gaining nothing from the million acres which we have already acquired. I do not know how many years back that runs, but I think it runs back certainly to Governor Hastings's time, possibly beyond that, in the acquisition of land. Down in the Mont Alto Reservation, I recollect riding through miles and miles of very impressive timber. I do not know whether it was primeval growth, but some of the trees were exceedingly large. I have been on some of the reservations in the upper part of the state, and I had hoped that what was being done gave happy augury of the future. It is to me a great shock of surprise as well as disappointment to learn that that system has been all wrong. Now, what Judge Gordon has said impressed me a good deal, and that is if our experimentation during the past four or five gubernatorial terms has been ineffectual and really produced no results, it would be wrong, without some positive facts based on substantial evidence that the system can be remedied and the spread of the evil checked, to impose a bonded debt upon the people of the state in order to acquire land which you now describe as devastated. I am not quite clear that I understand what you mean by the word devastated. Do you mean fire swept?

Mr. PINCHOT. Mr. Chairman: And then burned over until there is little or nothing left.

Mr. CARSON. No vegetation springs up.

Mr. PINCHOT. The condition of those five million acres of devastated land is that the fires have been over them so often that before anything does spring up it is cut down again, with the result that nothing is produced of value to the state.

Mr. CARSON. Mr. Chairman: Am I correct in the conclusion that this devastation of the forests is a menace to our water supply?

Mr. PINCHOT. Mr. Chairman: It is a very serious menace to the water supply, even to life. Last October nearly five hundred human lives were lost in Minnesota under conditions not very different from those in northern Pennsylvania.

Mr. CARSON. Mr. Chairman: Of course, the loss of life is a most deplorable circumstance, but five hundred human lives weigh but little in the balance against the agriculture of the state if the headwaters of such a river as the Susquehanna are menaced. As I recall it geographically, in the center of the commonwealth the drainage area covers about twenty-nine thousand five hundred square miles, stretching up into New York state on the northern branch, and stretching into the western part of the state on the western branch and its tributaries, among them the Juniata, and altogether it gathers up the streams on a watershed draining an area of twenty-nine thousand five hundred square miles. That is more than half the area of the state, the state only having forty-five thousand square miles. Thirty-seven counties of the state are drained by the Susquehanna. I have not primed myself on this question, but the way I happen to know the extent of the territory drained by the Susquehanna is that I had the duty imposed upon me when in office to endeavor to save for the commonwealth the slackwater navigation along the valley of the Susquehanna by insisting that a provision should be put into the decree of the court authorizing the building of the dam at McCall's Ferry, so that if at any moment the state deems it wise to improve its inland waterways, that that dam should be provided with locks so that the water could be preserved and not rush out into the Chesapeake Bay and leave our great valleys entirely dry. I thought that it was part of the policy of the state to acquire, say, five-thousand-acre tracts of forest lands in the upper regions of the tributaries of the main stream of the commonwealth. Devastation by fire, of course, dries up the soil by exposing it to light and air. I understand the purpose of foliage is to catch the rain. The pine needles will divide the raindrops; in the case of the white pine, each drop into five drops, and in case of the yellow pine, each drop into seven different drops, which trinkle slowly into the soil, and thereby preserve the moisture, by making a reservoir of water, whereas on the naked hillsides the water rushes down and sweeps the soil of the upland farms and everything else out leaving nothing but desolation. I am entirely in sympathy with this thought of forest conservation, but I confess that I am both pained and rather surprised to learn what has been done during all these years has really gone for naught.

Mr. PINCHOT. Mr. Chairman: May I answer the gentleman briefly? Here is the situation as to fire. Two hundred and fifty thousand acres are burnt over in this state every year.

Mr. CARSON. Mr. Chairman: That would be one-fourth of our present forest area.

Mr. PINCHOT. Mr. Chairman: There is in the hands of the Department of Forestry here the most perfect weapon ever made by any legislature to assist in the prevention of forest fires. The act of June 1, 1915, under which the department has the right to declare that the condition in which any man's land is kept is a nuisance, and that if he does not clear up that nuisance every day in which he refuses to do so is a separate offense, and there is a penalty of one hundred dollars and imprisonment. Unfortunately, no forestry department in the United States, and so far as I know in the world, has ever had in its hands as drastic a weapon against fire as that. That bill was passed in 1915, and in not a single case has it ever been used. That is a remarkable statement, but true. Never has any man been compelled within the last ten years, until within the last few weeks, no man has ever been compelled under that law to prevent this great danger of fire by the condition in which he kept his land.

Mr. CARSON. Mr. Chairman: Does it not also affect the fish and game of the state?

Mr. PINCHOT. Mr. Chairman: It does affect game, fish, agriculture and transportation. The dangers are very serious. The difficulty is that that is privately held land, and the state lands are only about fifty per cent safer than the comparatively unprotected lands outside, as the figures of the state fire warden show; that, of course, is wrong, because there is a complete staff, but not a properly organized staff, of state foresters and rangers whose duty it is to prevent these fires. The organization of the State Department of Forestry unfortunately leaves out everything that a good department of forestry ought to contain. Just as one illustration to Mr. Carson, I happened to learn yesterday of one state reservation which has for ten consecutive years had no visits from anybody in the Harrisburg office to see what was going on. I know of many others that have not had a visit for five, six, seven, eight or nine years.

Mr. CARSON. Mr. Chairman: Is there no co-ordination between the Game and Fish Commission and the Forestry Department?

The CHAIRMAN. If the Chair may join in with the discussion. I would say that there was introduced in the last session of the legislature a conservation bill which was defeated.

Mr. PINCHOT. Mr. Chairman: It was a most desirable measure.

Mr. CARSON. Mr. Chairman: I know that the great zeal on the part of the Fish Commissioner and Game Commissioner was to get an act passed in 1903. There was an act passed in 1903 which made it an offense to take terrapin and bullfrogs out of ponds or streams except at certain seasons of the year. Afterwards the Fish Commissioner and Game Commissioner came to the conclusion that snapping-turtles so strongly resembled terrapin that they ought to be within the protection of the law. I recollect that I received a letter which I had set aside for framing. I do not know whether it is now on the walls of the Attorney General's department or not. I received a letter from a justice of the peace down in York county which ran something as follows: "Dear Attorney General: The age of miracles is not yet passed. The Fish Commissioner and the Game Commissioner have decided that the snapping-turtle is a terrapin, and ask me to send men and boys to jail. Please decide this interesting

question of natural history; but please remember in our part of the country a sunfish is not a sucker and an oyster is not a clam." I affirmed the question of law and the question of natural history both. What ought to be done, Mr. Pinchot? I am really very much interested in this. I must say that I had imagined that the interest of the lads who were born in the forest was enlisted in the service of the forest protection, by saying to them, "These are your native woods, you understand their ways, their hilltops and their streams, you go to work and help the forester save it." Has all that been lost?

Mr. PINCHOT. Mr. Chairman: I am sure there is no better body of men in the state employ than the state foresters, all graduates of Mont Alto forest academy. You cannot find a finer or more upstanding, badly underpaid and neglected body of faithful public servants.

Mr. CARSON. Mr. Chairman: That is the way it impressed me.

Mr. PINCHOT. Mr. Chairman: Without leadership it is impossible to do what must be done.

Mr. McCORMICK. Mr. Chairman: Might I ask the gentleman some questions in regard to this section, because it happens to be in my opinion a very important question? I can understand how our public debt might be increased by a three-fourths vote of the legislature to purchase forest land and obtain property which should become an asset to the state. There has always been an old-fashioned notion in my head that there is a big question about borrowing money to make what might be termed temporary improvements, if you can take it out of your annual fixed revenues. I wondered, I noticed that in this section, just looking at it from a business standpoint, that there is no mention of any sinking fund provision if the legislature should increase the debt, and I wanted to ask that question, or does that come under another clause?

Mr. PEPPER. Mr. Chairman: There is a later section in article IX that provides that in effect. It provides in effect that when the state does create an indebtedness, a sinking fund provision shall be inserted.

Mr. McCORMICK. Mr. Chairman: The only question that I would like information on is whether or not the committee considered any limit that might be imposed upon the legislature, as to whether or not the committee considered any limit to the debt that might be imposed by the legislature. I am thinking of the improvements and rebuilding. In one sense that might be classified as a permanent improvement; in another sense it is simply repairing and rebuilding as your clause states. If we borrowed fifty million dollars today by a vote of the people, and at the present rate of cost, if I am correctly informed, sixty thousand dollars a mile, will only build approximately eight hundred miles of road, and that the state has probably in its care all told about eight thousand miles of road. It would take a half billion dollars at this rate to build the roads of the state that are under state control. That is another question that I think should be carefully considered as to whether or not in a section of this kind a limit ought to be fixed as to how much can the state government officially spend in one year. How many miles of road would it be possible to build under state supervision in one year? There is a limit to an efficient expenditure and that seems to me is a very important question that should be determined on this point. I do not know whether it does later in the Constitution take

care of that proposition. Then there has been no budget provided, and there is no intelligent manner of providing for road needs if it is passed, presented to the legislature like your charitable needs, which we passed today by a budget. Every county wants roads, and they want all the roads they can get. If each of the sixty-seven counties comes in with its demand, and they all have votes in the legislature, you start the old log-rolling system. How can you make a proper distribution if you leave this question open in this way for the legislature to determine? These are questions on which my own mind is not fully made up. I am not clear about it, but it seems to me it should be considered in discussing this clause. In other words, on the question of roads, you open up a different question than you do on the question of forestry because you buy a piece of land which under proper management is bound to increase in value; on the other hand, you put your money into something for which there is no sinking fund providing for the payment of the debt, and the debt must be paid some time, as the road is depreciating and will have to be rebuilt again some day. And it is that principle that I would like to have the Commission give consideration to before you hastily act upon a question as broad as this.

Mr. PEPPER. Mr. Chairman: I very earnestly hope that the Committee of the Whole will act deliberately and advisedly upon this proposal. We are aware that it is one of very great importance. The constitutional provision as it stands is one which guards so jealously the borrowing power of the state as in effect to leave the state stripped of the borrowing power for anything but emergencies, except in the case of roads. That is an exception, as Mr. McCormick will remember, that has been introduced only by the recent amendment of the Constitution which authorized the present bond issue for the rebuilding and repairing of the highways of the commonwealth. It is true that the state could not borrow money except for such emergency purposes as to suppress insurrection, to repel invasion within the state in time of war, for casual deficiencies of revenue not exceeding one million dollars and to refund state debt. In other words, except for the road provision the existing Constitution proceeds upon the theory that this great business corporation of ours shall do none of its own financing for ordinary purposes on the basis of its credit. Now the proposal brought in by the committee represents a departure from that policy. Whether it is a wise or unwise departure is for this body to determine. The departure is a departure that is specific in so far as it specifies borrowing for purposes of acquiring land for timber growing, and it is general in so far as it leaves it in the power of the legislature to borrow for any purposes, and pledge the credit of the state, provided three-fourths of the legislature so vote. Now, Mr. McCormick is, of course, quite right in pointing out the dangers that there always are when any corporation has the borrowing power and is under temptation to use it unwisely. The question we have to consider is whether the danger that it may be used unwisely is sufficient reason for cutting off this great corporate enterprise of ours which we call the state of Pennsylvania from utilizing its credit for purposes which three-fourths of the legislature approve. It seems to us, and when I say us I mean the committee, it seems to the committee that a three-fourths vote is a reasonably certain assurance that the proposal under consideration will be

one which will stand every test of sound business standards and wise business management. If that principle is not sound, then the Commission ought to vote down the proposal of the committee because that is the only safeguard that the state will have against improvident borrowing. We believe, sir, that such a vote as is here provided for is a sufficient safeguard. We think that a great and progressive commonwealth like this will be seriously handicapped if the old-fashioned method of excluding the use of the credit of the state from its business operations is too strictly persisted in. We hope you will recognize that it is a matter for serious consideration and that there are two sides to it, and that on the whole the recommendation we make is the wise, prudent and progressive one.

Mr. MUNCE. Mr. Chairman: May I have a word on this point? I do not think the committee need give itself any concern that they have made any mistake by giving the state the right or power to borrow money for the improvement of our roads. A great many people at least sometimes think that the improvement of our roads only inures to the benefit of the rural districts, or the rural public. That is not true. It is true that a system of good roads under the management of the road organization that we have at the present time seems to promise so much, is going to be a very, very great benefit to the state of Pennsylvania, to the citizens in both the cities and in the country. In regard to this matter of forest conservation, I think that I know, I do not know very much about many other things that you are talking about here, but I think I do know something about the great importance of the conservation of our forests and of our soil fertility, and the thing that pertains to the productive power of the state of Pennsylvania. Now, in regard to the road proposition, when we loaded ourselves, or proposed to load ourselves, with a bond issue for improving the road system of the state, we immediately enhanced the value of the property of the rural district and the city district too, so that we will have a very much larger return from taxation on account of the improvement, of the enhanced value of property in the county, on account of the better transportation facilities throughout our state. Unfortunately, I am sorry, I must admit it, that while we American farmers are looked on as being great fellows and having done very great things, I want to say that the American farmer has been a miner. In other words, out there in Ohio and other districts they are mining under the stripping system, and a lot of people are making a fuss about their tearing up the earth there in order to get the coal and destroying the surface of the earth. Now, the fact of the matter, if you get down to brass tacks, is that the American farmer up until the present day, or at least not very long since, has been a miner. But he mines differently from what the coal miners do. He has been mining on top of the earth, he has been destroying it. I have been through a great deal of the tearing up of the forest and in the clearing of land. I remember with some pleasure and some displeasure about having to pick chips and little switches, and so on, on a hot spring day, when the boys of the country would get the spring fever like some around the towns do, I believe. The old system has been that the American farmer when he wanted more land, or wanted some land to cultivate, heretofore, especially in Pennsylvania and many other states, has gone into the woods and cut down and destroyed the timber, regardless

of anything, and plowed it up and sowed it for a few years, as long as it produced well, and then passed on to the west, leaving that ground bare and unproductive, having taken out of the virgin soil the good qualities. That land would produce crops for some time. Then he passed on into the forest and went west. We used to get reports coming back to us from the west that those western prairies were inexhaustible, that they could not be worn out, the soil was so deep and so fertile that it could not be worn out. Formerly in those great wheat-growing districts they ran the straw right out from the machine and burned it just as it came out. But later they found that they could not do that, that it was necessary for the western farmer on those prairies to cultivate that soil in order to get good crops. Now, that is what is happening here. And you can see what an important thing the forest conservation scheme with proper management is. We can in the state of Pennsylvania go far towards putting our state again on the agricultural plane that she ought to be, and we can do that which will inure to the benefit of the country and the city residents. But almost anything that can be done, as has been said, this reforestry ought to keep trees, shrubs and undergrowth vigorous upon the watersheds, which, by the way, is going to be very important in the city, and I want to say to you that it is mighty important to the people of the country too. It seems to me, I do not know whether it is imaginary or not, but it seems to me that now, even now, that our climate has changed very materially in the last twenty-five or thirty or forty years from what it used to be. I think it is largely due to the fact that we do not have as much forest as we did then. I do hope that this Commission, if you are going to decide on it, will decide to give us this power so that we can re-forest the hills and take proper care of both the forests and the erosion of the soil. When you do that, as has been said by some one, you have created not a debt, not something that is going to take away from us, but something that will inure to our benefit. It will be a commercial income to us. As it is today, there is much land that does not return anything at all to the state in the way of taxation. It can be arranged finally that that land can be reclaimed and made productive so that it will produce something for mankind. I hope that you will amend as the committee proposed. We can preserve these great natural resources we have here, and we can re-timber and re-occupy these lands here so that they will be as valuable as the good Lord intended that they should be, and I hope that the resolution, or the amendment, or recommendation will be at least passed, or at least that we do not dispose of it in any way unfavorable, and that we can do something for this improvement process.

Mr. CARSON. Mr. Chairman: How long would it take to produce results in devastated districts? If the bond issue ran thirty-five or forty years, would the return in that time pay the interest on the debt?

Mr. PINCHOT. Mr. Chairman: I should say that it would pay the interest on the debt, but there is a little doubt in the case of the twenty-five-year bonds.

Mr. CARSON. Mr. Chairman: I have no objection to the time. Would it be necessary in order to conserve the moisture in the

ground and the protection of the soil from the violence of the storm to have the trees one hundred feet high to get such results?

— Mr. PINCHOT. Mr. Chairman: No; the state is getting the benefit at once, the money return would come later.

Mr. McCORMICK. Mr. Chairman: I am strong for roads, good roads. When the first law was passed to appropriate money for roads, I remember setting an example. I paid the township share for the road at my farm in order to encourage the supervisor to go farther. I believe strongly in the expenditure of large sums of money in the building of roads, and I am perfectly willing to pay my tax for all the roads the state wants to build, but that is not the question. My experience as mayor of Harrisburg has taught me that the method of increasing our indebtedness under the law was a very wise one, where it would have to have the vote of the people to go over seven per cent of the assessed valuation, a very wise provision. It seems to me that some provision of that sort in the Constitution where it is possible for one legislature to tie this state up with a debt of millions of dollars, money to be expended away in the future, beyond the next session of the legislature, then it will be perfectly proper to put some limit. I have not in my mind, but the committee could work out some plan or some check that they should not borrow more than would be expended over two years between the sessions of the legislature, or a certain increase, or a certain percentage of the state valuation of its wealth. This seems to me the most liberal provision of the Constitution that has been presented to us so far. It is too liberal, it is not businesslike. I hope that the committee can give that feature of it some further consideration. A three-fourths vote of the assembly is better than a majority, better than two-thirds, but is it enough when you have a clamor behind the legislature for county roads? And therefore I would suggest an amendment to this section in its present form, not because I do not believe in expending large sums for road construction, because I do believe in it; but because I believe it is fundamentally wrong to give that freedom of action to increase our state indebtedness with absolutely no check on it. I think that part of the resolution is wrong, and I would like to be able to vote on it separately if I could.

Mr. FISHER. Mr. Chairman: It seems to me that the amendment proposes to do away with the necessity of submitting the question to the people in the creation of debt. The old Constitution, as Mr. Pepper has said, strips the state of borrowing power save in a few excepted instances. Doubtless there was good reason in the minds of the framers of that Constitution for taking such extreme grounds. Some of us perhaps can remember, at least all of us have read back to the time, when the state was burdened with debt created for the purposes of internal improvement and for kindred purposes, as a result of which the finances of the state were in a deplorable condition. I have no doubt it was that situation that operated on the minds of the framers of the present Constitution when they inserted the present provision. It seems that perhaps they did go somewhat to extremes, but I am afraid that I am going to find myself in accord somewhat with Mr. McCormick. It is not often that we agree on these questions, or have not up to today. But I can hardly reconcile myself to the thought that it should be made so easy to burden the state with a debt. Under the provision as drawn a debt may be created for any purpose by the act of one legislature for any amount

with the support of three-fourths of the members. Now, that is a long step from where we are now. What has been the effect of the operation of the present provision? Well, has it not lifted us out of the old deplorable state of indebtedness into a position that is unique among the states of the Union? We stand, I believe, alone today without public debt save the debt that was created by the vote of the people for the purpose of constructing roads. That is an enviable and a proud record. It seems to me that there ought to be further restrictions placed upon the borrowing power than are found here. I doubt whether there ought to be any debt created except in those special instances, and perhaps in the case of forestry and the roads, without a referendum vote. I am no friend of the referendum either. I am not known as that; but there are fundamental things upon which people ought to have the privilege and the right of expressing themselves, and I think this is one of them. Now, with that thought in mind, in order to have the expression of this full Commission, I would offer to amend the report as submitted by striking out the first words "Except with the approval of three-fourths of all the members elected to each House," so that the section will then read, "No debt shall be created by or on behalf of the state for any purpose * * *." Now, that will leave it stand as it was in the original Constitution, broadening the borrowing power to include money for the purpose of increasing and taking care of our forests and for the construction and care of our roads. I am not so sure that those two purposes ought to be sanctioned by a bare majority of the legislature. I will offer this amendment leaving that subject for subsequent action.

Mr. ALTER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. FISHER. Mr. Chairman: I have not had time to formulate anything, but it seems to me that we make it easier to create a bond issue in the state than to pass an appropriation. Now it requires a two-thirds vote, and yet under this provision as it now stands you could create a permanent debt without limit, except as to the one item of one million dollars, simply by vote of the majority of the legislature. I would like to have the opportunity of suggesting an amendment which will require a three-fourths vote in the cases of forestration and roads. With that in view, I would move that further action at this time be postponed.

Mr. PEPPER. Mr. Chairman: That is entirely agreeable to the committee, sir, that further consideration of this section should be postponed for the present pending the receipt of the suggestion by way of amendment from Senator Fisher, and I second the motion.

The motion was agreed to.

The CHAIRMAN. The section will go on the calendar for consideration next week.

ARTICLE IX, SECTION 5.

The CHAIRMAN. The next section in order for consideration is section 5 of article IX of the Constitution, the report of Committee No. 4 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 5. All laws, authorizing the borrowing of money by and on behalf of the state, shall specify the purpose for which the money is to be used and the money so borrowed shall be used for the purpose specified and no other.

On the question,
Will the Committee adopt the report?
It was adopted.

ARTICLE IX, SECTION 12.

The CHAIRMAN. The next section in order for consideration is section 12 of article IX of the Constitution, the report of Committee No. 4 being that this section be stricken out and the subsequent sections be numbered accordingly.

The Secretary read the section as follows:

Section 12. The moneys of the state, over and above the necessary reserve, shall be used in the payment of the debt of the state, either directly or through the sinking fund, and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything, except the bonds of the United States or of this state.

On the question,
Will the Committee adopt the report?

Mr. PEPPER. May I say, Mr. Chairman, on behalf of the committee that this section was before the Commission once before and was reported out by us for adoption without amendment? We were in receipt, however, of a very valuable suggestion from the assistant Attorney General, who pointed out that under section 11 in relation to the sinking fund there is in the last sentence a provision for the increase of the fund from time to time by assigning to it any part of the tax or other revenue of the state not required for the ordinary and current expenses of the government and that that section contemplates legislative action with a view to such assignment. There is some inconsistency between section 11, therefore, and section 12, which provides for an automatic application of surplus revenue to the sinking fund. It seemed to us that the criticism was a sound one, that the application of surplus revenue to the sinking fund should be by legislative action rather than automatically. The two sections ought not both to stand, since there is an inconsistency, and that the balance was in favor of the adoption of the suggestion made and striking out section 12.

On the question recurring,
Will the Committee adopt the report?
It was adopted.

ARTICLE IX, SECTION 14.

The CHAIRMAN. The next section in order for consideration is section 14 of article IX of the Constitution, the report of Committee No. 4 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 14. The making of profit out of the public moneys or using the same for any purpose not authorized by law by any officer of the state, or member or officer of the general assembly, shall be a misdemeanor and shall be punished as may be provided by law, but part of such punishment shall be disqualification to hold office for a period of not less than five years.

On the question,
Will the Committee adopt the report?
It was adopted.

ARTICLE XVI, SECTION 4.

The CHAIRMAN. The next section in order for consideration is section 4 of article XVI of the Constitution, the report of Committee No. 4 being that the section shall stand without amendment.

The Secretary read the section as follows:

Section 4. In all elections for directors or managers of a corporation each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVI, SECTION 6.

The CHAIRMAN. The next section in order for consideration is section 6 of article XVI of the Constitution, the report of Committee No. 4 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 6. No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it hold any real estate except such as may be necessary and proper for its legitimate business.

On the question,

Will the Committee adopt the report?

CORPORATE POWERS.—REAL ESTATE.

Mr. PEPPER. Mr. Chairman: I might say that the point here involved is exceedingly narrow and perhaps a technical one. The only change suggested by the committee is the omission of the words "take or." The reason which has actuated the committee in making the suggestion is this: The policy of the state to limit the amount of realty that corporations may hold is in our judgment adequately safeguarded by placing a restriction upon the holding. If you retain the restriction upon taking you may at any time in this commonwealth produce the curious situation which arose some time ago in New York state, where in the presence of similar language a great devise of property to Cornell University for educational purposes failed, and went to the next of kin. The decision of the court of appeals was that the restriction was not merely on holding land not needed for the purposes of the corporation, but being a restriction upon taking as well as holding, that the corporation was unable to take the devise, although if it had been taken, the ground would have immediately been sold under the provisions of the will and the proceeds used for the proper corporate purposes of the university. As I say, it seemed to the committee that the policy of the state is entirely safeguarded by the provision that the corporation shall not hold land in excess of its corporate needs. If it does hold land the title is defeasible by the state. We merely wanted to guard against the contingency that a too drastic provision of this kind would do no good and might in a particular case work great injustice.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVI, SECTION 7.

The CHAIRMAN. The next section in order for consideration is section 7 of article XVI of the Constitution, the report of Committee No. 4 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 7. Shares of stock having par value shall be issued only for the equivalent of such par value in money, labor done or property actually received; but, subject to such provisions respecting public notice as may be made by the general assembly, a corporation may issue additional full-paid shares for a consideration in money, labor or property equal to the established market-value of its shares theretofore issued. Neither the stock nor indebtedness of corporations shall be increased except in pursuance of general law, or without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after thirty days' notice given in pursuance of law.

On the question,

Will the Committee adopt the report?

STOCKS AND BONDS.—INCREASE OF INDEBTEDNESS.

Mr. PEPPER. Mr. Chairman: The changes suggested by the committee are four. The first is a proposal to recognize the distinction which is now well established between shares of stock having no par value under the existing no par stock act and shares having par value. The provision which we have reported for insuring that the original issue of stock will be made only for equivalent value seemed to the committee to be an adequate protection for the interests of creditors. We have struck out the ambiguous provision of the present section of the Constitution which I think has always been a serious problem for the courts, a provision that fictitious increase of stock and indebtedness shall be void. It has often happened that it has been necessary to sidestep that provision in order to protect innocent holders of securities who bought them in good faith, without knowledge of the original infirmity of issue. It seemed to us that there is no real basis to determine what is a fictitious increase within the meaning of the existing provision, and that it may with advantage be omitted. The next thing that we did was to propose that corporations which have stock outstanding, which are going concerns, and whose stock has an established market value, may do financing through the raising of capital by selling their stock at a discount as distinguished from being compelled to borrow money on short-term notes at a high rate of interest. It has come to our knowledge that in many instances where the stock of the corporation is selling below par and it is in need of additional capital, it is in fact disabled from raising new capital by stock issue, no matter how desirable it may be from the point of view of corporate finance, because if it is unable to issue the new stock at less than par it cannot dispose of it when the outstanding stock is selling below par, and is therefore driven to resort to borrowing at more or less high rates of interest. The danger that comes when a corporation issues stock at less than par is the danger which, in our judgment, is sufficiently safeguarded by providing for notice, public notice, to be specified in the act regulating the exercise of this constitutional power. And the final change which the section contemplates is shortening of the period of notice of meetings to authorize the increase of stock from sixty to thirty days.

Mr. CARSON. Mr. Chairman: May I ask about the meaning of the words "established market value of its shares?" What is meant

by the words "established market value" as distinguished from "equivalent of such par value in money, labor done or property actually received?" It might be that the price was a very unstable one, it might be up or down ten or twelve dollars one way or the other. Do you not rather deprive the clause of its usefulness by putting in that word "established?"

Mr. PEPPER. Mr. Chairman: We felt, sir, we ought to err on the side of conservatism in making a suggestion which may be regarded as radical. In other words, that we wanted to limit the cases in which this might be done to the case of a corporation which was in such good standing that its shares might properly be described as having an established value.

The CHAIRMAN. For information, I would like to ask whether the committee means by this that the corporation could not sell or issue its stock at par when the stock was selling above par.

Mr. PEPPER. Mr. Chairman: No, sir; that was not the intention of the committee, and it has not occurred to us that there could be any such implication from this section. The only power that is given in the portion of the section now under consideration is a power to issue additional full-paid shares for a consideration in money, labor done or property equal to the established market value of the shares theretofore issued. This is a power that is not a compulsory provision; it does not limit the right of the corporation to issue its shares at par, or at any figure below par, as it seems to us.

Mr. CARSON. Mr. Chairman: I confess I am in doubt as to the word "established." Who is the judge of that?

The CHAIRMAN. I can well understand the action of the board of directors would be not taken without due consideration, and you might say that the price fixed by them in their judgment established the market value of the stock, particularly if they were able to dispose of it.

Mr. PEPPER. Mr. Chairman: My answer to your question is this, that the section is in our judgment not a self-executing section. The general assembly in carrying the provision of this section into effect will indicate what the safeguards are in respect to notice, and what the conditions are under which the market value may be regarded as established within the meaning of the provision.

Mr. CARSON. I only wish that every member of the Commission were as wise as you, Mr. Pepper. Judge Gordon, how do you feel about the use of that word "established?"

Mr. GORDON. Mr. Chairman: I do not think the stock listed and dealt in in the New York stock exchange can be said to have an established market value. I think a minimum market value might be established by the quotations of the New York stock exchange.

Mr. CARSON. Mr. Chairman: Or the Philadelphia stock exchange?

Mr. GORDON. Mr. Chairman: I think the market value could be established in those quotations. I do not know that a maximum market value could be established, but in any case I doubt whether these are the terms in which to permit corporations to issue stock having a depreciated market value. With the physical valuation of railroads going on by Congress, a herculean task, which some people think it will take generations to complete, that question being as to what shall be received by stockholders of transportation com-

panies in the event of the government's taking them over, and generally with the securities of all the public utility companies in disquietude and peril and trembling in value, with these questions which are written all over them, I think it would be unwise at this time to permit a corporation to issue its depreciated stock at this depreciated standard. The managers of the Pennsylvania Railroad tell us yearly, and tell us with great effectiveness, that their shares of stock, and the stock of that corporation is held by thousands of stockholders, and they tell us how many of them are women, how many are trust estates, and very often we are told that this stock has always been issued for par, and in some cases for more than par. At one time more than one hundred millions of stock was issued by the Pennsylvania Railroad at sixty; I think the figures are right, and sixty dollars was paid for the par of fifty dollars. In the future in the mutations which may occur depending upon the attitude the United States and the state may take toward public utility companies, the whole issue of the stock of the great companies might be brought into question if those corporations issue their stock for varying sums, sums as high as twenty per cent above par and some probably lower than twenty below par, and it is better not to make this change at this time, and corporations should continue where it was necessary to borrow for temporary uses to borrow upon certificates of indebtedness.

Mr. REED. Mr. Chairman: There was no specific case in the mind of the committee. It is not intended to meet any specific case; but I suppose I am responsible partly for the suggestion. A good many corporations find themselves in the condition today where their stock has depreciated, where they cannot under the constitutional provisions, unless they resort to some sort of bookkeeping jugglery by paying excessive commissions to some one to issue and sell stock at par value, so that they are compelled to borrow for their necessities, to borrow money, and they find difficulty in selling bonds. Therefore they have to go into the market and pay extravagant commissions, submitting to drastic terms from bankers who have the money or control it, in order to get money to meet their necessities, and that is only a short-time borrowing. They are locked tight hand and foot by this provision. Now, I suggested to the committee that, subject to certain restrictions, it might be advisable to give a corporation enough elasticity to meet the conditions. The Pennsylvania Railroad has been referred to. The Pennsylvania Railroad could not today sell at par if it wanted to one hundred thousand shares or any amount. I do not think this provision will be abused by any corporation, particularly by a corporation which is subject to the Public Service Commission, or the Interstate Commerce Commission, because of necessity if the Pennsylvania Railroad Company sold one thousand shares of stock at forty-two dollars, that is today the market price, they would be compelled, under the accounting system of the commission, to charge that eight dollars a share up against their surplus, and that company is not going to do anything of that kind if it can help it. It would seem to me that there is enough restriction in the company's own financing and bookkeeping to prevent it from using that power unless there was a necessity for it. There come times in these large corporations when they must have money, when they cannot possibly get it by selling stock at par, when

it would mean ruin to them to borrow on short-time paper, especially in these times when you cannot sell bonds of public utilities, if that condition arises.

Mr. PEPPER. Mr. Chairman: The members who are lawyers will recall that the right of a corporation to dispose of its shares at a discount in the way here specifically recognized has been upheld, even in the absence of such a provision, by the Supreme Court of the United States. My recollection is that in a decision in 139 U. S., *Handley vs. Stutz*, the court expressed the view that a going concern, as distinguished from a corporation in process of organization, might with propriety sell its shares at a discount at the then market value of its outstanding stock as a means of financing. We are fully sensible of the difficulties that surround a question of this sort, but it seemed to us the balance of convenience and advantage lies on the side of our recommendation. While all that Judge Gordon has said is true, of course, respecting the importance of safeguarding shares held in corporations by fiduciaries, guardians, widows, and so on, yet it must also be remembered that for the protection of existing stockholders nothing is so safe as to do your financing by issuing more stock and that the greatest menace to the existing stockholders is the menace that comes when you are driven into the market and create indebtedness at a high rate of interest. I think it represents a departure from existing practice only in the particular of giving rise to the possible criticism that creditors might be led into the belief that the corporations are receiving one hundred cents on the dollar for their stock, and that consideration led us to make the provision for public notice under the direction of the general assembly.

Mr. PINCHOT. Mr. Chairman: Through the courtesy of former Attorney General Carson, I want to call attention to the statement which followed this recommendation in the report of the committee. "The foregoing recommendation is made on the responsibility of those members of the committee who are lawyers." There are two members who are not lawyers, Mr. Stackpole and myself, and speaking for myself, the investigation I have made in this matter inclines me to differ, with all diffidence, from the legal members of the committee, and I want to move that section 7 of the present constitution be substituted for the report of the committee.

Mr. GORDON. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. PEPPER. Mr. Chairman: I do not know whether it was in the mind of Mr. Pinchot in moving this resolution to dispose also of what seem to us to be salutary changes that have not so far challenged debate. I refer, for instance, to the shortening of the notice of the meeting to increase indebtedness from sixty to thirty days, for which there seems to be a general demand, and I refer also to the omission of what has seemed to us an ambiguous and a rather misleading declaration about the validity of these increases in stock and indebtedness; and also to the form of the declaration as to how the original stock issue is to be made. That seems to us to represent a distinct improvement in the way of clearness of statement from the present provision. I raise that question merely because it seems

possible that Mr. Pinchot may have made a motion that is wider in scope than his specific intention.

Mr. CARSON. Mr. Chairman: I do not want to be interpreted as opposing the section as reported. My inquiry was rather to the meaning of the word "established." It struck me as being an indefinite term.

Mr. REED. Mr. Chairman: That was put in as an additional safeguard. Very few corporations can avail themselves of this unless they can show an established market value of their stock.

Mr. CARSON. How would you fix that, Judge Gordon? The way I read this, it would seem to me that this really is an authorization to a corporation in need of funds to double its outstanding capital stock for the then apparent market value of the outstanding stock.

Mr. REED. Mr. Chairman: Probably if we had said "current" it would have been better understood.

Mr. GORDON. Mr. Chairman: Just a word. I approach this matter quite impersonally and with natural conservatism. Now, I agree that this would be called, in the language of Mr. Pepper, conservative financing by financiers and by capitalists. It would not be called conservative financing by those who are critical of capitalistic methods of financing. For instance, it would be pointed out by a critic of capitalistic methods that a share of stock with a certain fixed par value was sold for a very much less sum than that, and therefore went into the hands of its owner with a certain percentage of water in it and became a fixed charge upon the public forever thereafter, because the corporation would claim that it had a right to earn a reasonable dividend or return upon the capital invested, and the capital invested they would say was evidenced by the capital stock, the amount held by the owners of the road, and therefore they would ask for a certain reasonable return upon that capital stock. If the corporation is permitted to sell its capital stock at an amount less than par, and fixing par as the gauge for the amount that the public is to pay by way of toll for the services rendered, in the minds of critics of financiering you do that which is an improper thing, an unjust thing, and which lays open to serious question those public corporations that so often come to the law for certain privileges or easements. It is of very doubtful equity whether a corporation which has issued large numbers of shares of stock for par value should afterwards in an emergency evidenced by a majority vote be permitted to issue large numbers of shares of stock for less than par value and fix those shares upon an equal distributive basis with any future profits of the concern. Now, I do not say that that is my criticism of the matter. I am outside of the rank of capitalists and do not represent money, but that is the criticism that would be made of this method, and the criticism is just if the corporation is obliged on short-term notes or bonds to borrow the money for its needs.

Mr. REED. Mr. Chairman: I was only going to say that so far as the valuation of property in the case of public utilities and railroad companies is concerned, their valuation is not fixed on capital stock. The Public Service Commission of this state does not value a property in that way. They do not pay any attention to capital stock. You have got to show so much property. Now, take that and divide it with your stockholders as you can. The only

person that would suffer under a provision of this kind is the little stockholder, and being a stockholder in his company he is presumed to have a voice in the decision which will issue the stock. My friend speaks of issuing notes, and when prosperity returns pay off your notes. That is very beautiful if you can get somebody to take your notes. Can you? Short-term notes must be paid. These emergencies always arise just about the very worst time in the financial situation, and it means that some of Judge Gordon's friends in the neighborhood of the stock exchange, those gentlemen who have dinners, collect the material for more dinners by extravagant terms upon these notes. The borrower is the slave of the lender in most cases. As far as "established market value" is concerned, that Mr. Carson speaks of, Mr. Pepper, and I presume all the members of the committee, will be satisfied to use the word "current."

Mr. CARSON. Mr. Chairman: The word "current" would seem more definite.

Mr. FISHER. Mr. Chairman: It seems from the discussion that we are all more or less up in the air on this subject. I am not sure in my mind if the proposed amendment or substitution makes any very violent change in the matter of marketing new stock issues by existing companies. There seems to be nothing in the original provision of the Constitution requiring it to be issued at par, property or money.

Mr. GORDON. Mr. Chairman: Property or money, full value, full-paid shares. That is one of the creditable things about a corporation formed in the state of Pennsylvania. Everybody knows that in shares of corporations formed in this state, they receive dollar for dollar in property or money for every share of stock is sued.

Mr. FISHER. Mr. Chairman: I think there have been some court interpretations which modified that. I am not clear on that and I should like to clear up my mind as to this subject. Especially so in view of the further fact that the amendment offered by Mr. Pinchot is to substitute the original provision, which is not in line with the views the committee has expressed through the chairman. Even if that were done there ought to be some modification, and I move that we adjourn until 11.30 o'clock next Tuesday. In the meantime the matter can remain under advisement.

Mr. PEPPER. Mr. Chairman: I know such a motion is not debatable, but it does seem to me that we would be wasting a great deal of time by adjourning early and doing nothing in the evening. I very much wish it were possible to do as we did yesterday, for instance, sit until six o'clock. We accomplished a lot in the last hour and it is not an hour that we can very well utilize for anything else.

Mr. FISHER. Mr. Chairman: I withdraw the motion to adjourn.

The CHAIRMAN. The opinion of the Chair is that we are going to adjourn until next Tuesday. We might as well stay here and complete the work as far as we can.

On the question recurring,

Will the Committee agree to the motion?

MOTION TO RE-REFER SECTION 7 OF ARTICLE XVI.

Mr. REED. Mr. Chairman: I would like to have the whole provision referred back to the committee. There are other parts of the section that are without criticism. I therefore move that the Committee of the Whole recommend that this section be referred back to the committee.

Mr. PINCHOT. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVI, SECTION 9.

The CHAIRMAN. The next section in order for consideration is section 9 of article XVI of the Constitution, the report of Committee No. 4 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 9. Every banking law shall provide for the registry and countersigning, by an officer of the state, of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the Auditor General for the redemption of such notes or bills.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVI, SECTION 10.

The CHAIRMAN. The next section in order for consideration is section 10 of article XVI of the Constitution, the report of Committee No. 4 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 10. The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of this commonwealth, in such manner, however, that no injustice shall be done to the corporators.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: The members of the Committee will perceive that the only change advocated by the committee is the omission of the final sentence of the section as it now stands. That sentence is this: "No law hereafter enacted shall create, renew or extend the charter of more than one corporation." We found upon investigation that this was a provision of an earlier Constitution which evidently by inadvertence had been incorporated in the Constitution of 1874.

Mr. CARSON. Mr. Chairman: At a time when corporations were created by special law?

Mr. PEPPER. Mr. Chairman: Exactly; and if it were permitted to stand and taken seriously, it would militate against the validity of the general corporation laws. We therefore recommend its omission.

The CHAIRMAN. It is in conflict with section 7 of article III.

Mr. PEPPER. Mr. Chairman: We so thought, sir.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVI, SECTION II.

The CHAIRMAN. The next section in order for consideration is section 11 of article XVI of the Constitution, the report of Committee No. 4 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 11. The general assembly shall have the power by general law to provide for the incorporation of banks and trust companies, and to prescribe the powers thereof.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: The Committee has thought it proper to recommend to the Commission the section that has just been read in place of the existing section. The fact is that the recommendation is in the exact words of the resolution which has passed two legislatures and is awaiting the action of the people at the November election. The proposal is to substitute general authority to the legislature to pass general incorporation laws affecting banks and trust companies as distinguished from the section as it now stands.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVI, SECTION 12.

The CHAIRMAN. The next section in order for consideration is section 12 of article XVI of the Constitution, the report of Committee No. 4 being that this section shall be stricken out, and the following sections renumbered accordingly.

The Secretary read the section as follows:

Section 12. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this state, and to connect the same with other lines, and the general assembly shall, by general law of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with, or hold a controlling interest in the stock or bonds of, any other telegraph company owning a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: May I explain that recommendation? At the present time article XVI contains as a caption the words "Private Corporations." Article XVII has for its caption the words "Railroads and Canals." It seems to us that the real contrast is not between private corporations on the one hand and the railroads and canals on the other, but private corporations on the one hand and corporations for public service on the other. We therefore recommend that the title or caption of article XVII be changed from "Railroads and Canals" to "Corporations for Public Service," and the elimination of section 12, which deals with public service matters, namely, the regulation of telegraph companies, has been made in order that all provisions as to public service corporations may be gathered together in article XVII. In other words, the omission of this section has nothing to do with the question of the merit

of the provisions in the section, but merely facilitates the dealing with the whole subject of public service companies in the article which will bear that caption.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVI, SECTION 13.

The Chairman. The next section in order for consideration is section 13 of article XVI of the Constitution, the report of Committee No. 4 being that the section shall be amended.

The Secretary read the proposed section as follows:

Section 13. The term "corporation" as used in this and in the next succeeding article shall be construed to include all joint-stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: The only change, sir, is to make the section applicable not merely to the term "corporation" when used in article XVI, but to the term "corporation" when used also in article XVII. In other words, the only additional words are those which refer to the next succeeding article.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVII.

The CHAIRMAN. The next article in order for consideration is article XVII of the Constitution, the report of Committee No. 4 being that the title shall be changed to read "Corporations for Public Service."

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVII, SECTION A-1.

The CHAIRMAN. The next section in order for consideration is section A-1 of article XVII of the Constitution, the report of Committee No. 4 recommending a new section.

The Secretary read the proposed section as follows:

Section A-1. The general assembly, by general laws or through such agency as it may from time to time create, shall have power to regulate public service and the business of all corporations engaged therein.

On the question,

Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: May I ask the chairman what is meant by these words "through such agency as it may from time to time create?" The legislature cannot delegate its legislative power.

Mr. PEPPER. Mr. Chairman: The meaning, sir?

Mr. CARSON. Mr. Chairman: You mean that it creates a general agency which shall be intrusted with the power of regulation?

Mr. PEPPER. Mr. Chairman: We mean, sir, that the Public Service Commission is such an agency as that which is contemplated, but we have avoided mentioning the Public Service Commission on the theory that so far as I can say we are not prepared to recommend that that particular form of dealing with public utilities shall be embedded in the Constitution. We wanted to leave the matter flexible, but we wanted to recognize the right of the legislature to deal with the question in some such fashion and through some such agency as distinguished from doing it always by direct legislation.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVII, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article XVII of the Constitution, the report of Committee No. 4 being that the section shall be amended.

The Secretary read the proposed section as follows:

Section 1. All railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with railroads of other states. Any canal corporation shall have the right to construct and operate a canal between any two points within the state susceptible of connection by waterway and to connect at the state line with the canals or waterways of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad; and shall receive and transport each the others passengers, tonnage and cars loaded or empty, without delay or discrimination. Every canal corporation shall have the right with its canal to intersect, connect with or cross any other canal or to cross any railroad upon such terms and under such conditions as the general assembly may by general law determine; and shall without delay or discrimination receive and transport each the others passengers and tonnage and permit the passage of one another's boats loaded or empty; and the general assembly may by general laws provide for the interchangeable receipt and transportation of passengers and tonnage by canals and railroads.

On the question,

Will the Committee adopt the report?

RAILROADS AND CANALS.

Mr. PEPPER. Mr. Chairman: The changes recommended by the committee are in the direction of providing in the case of canals for rights similar to those which the section had already granted in the case of railroads. The right is recognized to construct inland waterways between any two points susceptible of connection by waterway, and the right of one canal company to insist that another canal company shall carry its passengers and freight at junction points is merely extending to canal companies the provision that was already in the section with reference to railroads. The committee did not think it necessary to recommend that there should be a provision for the compulsory interchange of passengers and tonnage as between railroads and canals, but did feel that it was proper specifically to empower the general assembly to make provision by law for such interchange if need for it arises. Mr. Pinchot reserved the right to advocate, if he thought proper, before the Committee of the Whole the provision in favor of the compulsory interchange between railroads and canals as an automatic or self-executing provision as distinguished from the power of the general assembly to deal with the

subject by legislation. I am not advised as to whether he wishes to press that point or not.

Mr. PINCHOT. Mr. Chairman: I did want to bring that matter up, and one other matter in connection with this section, for this reason: It appears that the principal obstacle to the development of waterways all over the United States, and notably on our own rivers and along the Mississippi, has been the failure of railroads to pro rate their freight and accept passengers and freight arising from canals. We are told that the freight and traffic upon the Mississippi and upon a number of other rivers has declined to practically nothing and in favor of the railroads, which have for some time along the Mississippi practically controlled the waterfront of every town but one between St. Louis and New Orleans, and we shall have similar matters to meet in this state. Feeling as I do, sir, the necessity for promoting transportation by water in the state, the cost being only about one-third as high as railroad transportation when properly handled by terminals, I want to suggest an amendment, and then I want also to have that amendment cover the question of the standardization of canals so that boats running on one system of canals in the state or canalized rivers would be transferred to another, and for that reason I have prepared an amendment, and if it is satisfactory to the other members of the committee I should like to have referred back to the committee for its action. It is as follows:

"All railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers, and under general law shall respectively have the right to construct and operate railroads and canals between any points within this state, to connect at the state line with railroads and canals of other states, and to intersect, connect with, or cross any other railroad or canal; and under general laws shall without delay or discrimination receive and transport respectively each others passengers, freight, cars and boats; and to that end shall conform in construction to standards established by a state agency authorized by law to establish the same and in the public interest to permit variations therefrom."

Mr. CARSON. Do you use the word "shall" in the compulsory sense, or in the sense of "shall or may?"

Mr. PINCHOT. Compulsory.

Mr. PEPPER. Mr. Chairman: It will be entirely agreeable to Committee No. 4 if the Commission sees fit to refer this section back to us for further consideration together with the form of amendment that has just been proposed by Mr. Pinchot, which I am very glad to second.

MOTION TO RE-REFER SECTION 1 OF ARTICLE XVII.

Mr. PINCHOT. Mr. Chairman: I move that the Committee of the Whole recommend that the amendment together with the section be referred back to the committee.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVII, SECTION 2.

The CHAIRMAN. The next section in order for consideration is section 2 of article XVII of the Constitution, the report of Com-

mittee No. 4 being that this section shall be stricken out, and the following sections renumbered accordingly.

The Secretary read the section as follows:

Section 2. Every railroad and canal corporation organized in this state shall maintain an office therein where transfers of its stock shall be made, and where its books shall be kept for inspection by any stockholder or creditor of such corporation, in which shall be recorded the amount of capital stock subscribed or paid in, and by whom, the names of the owners of its stock and the amounts owned by them, respectively, the transfers of said stock, and the names and places of residence of its officers.

On the question,
Will the Committee adopt the report?
It was adopted.

ARTICLE XVII, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of article XVII of the Constitution, the report of Committee No. 4 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 3. All individuals, associations and corporations shall have equal right to have persons and property transported over railroads and canals, and no undue or unreasonable discrimination shall be made in charges for, or in facilities for, transportation of freight or passengers within the state or coming from or going to any other state. Persons and property transported over any railroad shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station; but excursion and commutation tickets may be issued at special rates.

On the question,
Will the Committee adopt the report?
It was adopted.

ARTICLE XVII, SECTION 4.

The CHAIRMAN. The next section in order for consideration is section 4 of article XVII of the Constitution, the report of Committee No. 4 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 4. Subject to such regulations as shall be prescribed by general law or by such agency as may be constituted from time to time by the general assembly, corporations for public service may consolidate with, or purchase the property of, or may through stock ownership or otherwise acquire and exercise the control, of other corporations formed for the same or a kindred purpose.

On the question,
Will the Committee adopt the report?

SECTION 4 OF ARTICLE XVII POSTPONED.

Mr. GORDON. Mr. Chairman: I ask that further consideration of the report on this section be postponed until Wednesday next. It is a very important subject, and a very radical change in the law.

Mr. FISHER. Mr. Chairman: I second the motion.
The motion was agreed to.

ARTICLE XVII, SECTION 6.

The CHAIRMAN. The next section in order for consideration is section 6 of article XVII of the Constitution, the report of Committee No. 4 being that it be stricken out, and the subsequent sections re-numbered accordingly.

The Secretary read the section as follows:

Section 6. No president, director, officer, agent or employe of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or worked by such company.

On the question,

Will the Committee adopt the report?

OFFICERS NOT TO BE INTERESTED IN CONTRACTS.

Mr. PEPPER. Mr. Chairman: My thought is, as it stands, it is applicable only to the officers of railroads and canal companies, that either it should be amplified so as to be made applicable to the officers of all corporations in the public service or stricken out as not being a proper matter for constitutional declaration but a legislative matter. We decided to recommend the latter alternative that it be stricken out rather than to go into an amendment extending a legislative utterance of this sort so as to be applicable to all corporation officers.

Mr. GORDON. Mr. Chairman: I oppose that because, in striking out this section, it would require very little alteration to adapt it to all companies or corporations. It was originally intended to cover railroads and canals, but it might be very well amplified and extended in its relations, and as it stands it seems to me it is a very wise provision. It is intended to confine transportation companies to the business of the transporting of freight. It is intended to prohibit the officers of all corporations from having any interest in the subject-matter for transportation, that is to say, they cannot produce the freight which goes over their lines. This particular clause also prohibits officers of corporations from being interested in the production of the freight which goes over their lines. "No president, director, officer, agent or employe of any railroad or canal company shall be interested directly or indirectly in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or worked by such company." It is generally a prohibition of the trustee's being interested in the performance of his trust and permitted to make money at it. It seems to me that the whole intent in that article, which is very well expressed, is to prevent conflicting interests of the officers and employes or directors of railroad companies that they shall be confined in their trusteeship to those things which directly promote the trust and not be allowed to have interests which may clash with the particular interests of one company with those of another, or permit themselves to profit in any way by any of the business of which they are trustees, officers or directors. That certainly is the intent of the article, and it seems to me it is good public morals.

Mr. PEPPER. Mr. Chairman: I hope that Judge Gordon will follow up his suggestion and submit for our consideration a pro-

posed amendment to this section. We had under consideration the possibility of amending it, and it seemed to us that the difficulties rather multiplied when you attempted to amend it. The first thing that you obviously want to do is to make the same declaration as is here made, if you are going to extend it at all, in the case of all public service corporations. There is no particular reason, I fancy, for limiting this declaration to railroads and canals as distinguished from other public utilities, and when your mind faces that problem you at once ask yourself whether this statement which is so obviously, Judge Gordon says, a sound statement of public morals, is not applicable to all public officers. It is really just as applicable in the case of the private corporations as it is in the case of public corporations, and the fact that you are extending a prohibition of this sort and limiting it to public service corporations has an unpleasant implication with respect to what fiduciaries in the case of private corporations may do. We found a very real difficulty in making an enlarged declaration on this subject which would not err by excluding some of the things that ought to be covered, and it will be a great favor to Committee No. 4, as well as a service to the Commission, if Judge Gordon can put into a concrete suggestion the criticism that he has made and give us the benefit of the suggested amendment. I hope he will do it, sir, if the section lies over for further consideration or is referred back to the committee, as the Commission may think best.

Mr. FISHER. Mr. Chairman: There is good reason for this provision as it extends now to all common carriers, as distinguished from the other kinds of public service companies. For instance, there would be no point in applying a provision of this kind to a lot of little water companies, electric light companies, and other little service companies operating over the state; but there is a sound reason for applying it to the officials of the great carriers of transportation. I cannot see any inconsistency in allowing the provision to stand practically as it is.

Mr. PEPPER. It certainly has its application, has it not, Mr. Fisher, to telephone and telegraph companies and to public service corporations of that sort, and to electric light, heat and power companies? It is asked, how could there be any discrimination by telephone and telegraph companies that would interfere with the service? So far as discrimination is concerned, the telephone companies are adepts at practicing discrimination, in creating zones with artificial limits, which operate in such a way as to give preferential service to the people who are more remote from the common point at a lower rate than those who are nearer the switchboard. There are all sorts of possibilities of that kind, but the point we have under consideration is one of regulating the conduct and morals of public officers. It seems to us at least broad enough, it ought to be broad enough, if it is to stand, to be applicable to all public service corporations. Personally, I have been apprehensive that if we form a distinction as to public service companies, there is an unpleasant implication as to what can go on in private corporations.

Mr. FISHER. Mr. Chairman: Is there any immorality in an officer selling the corporation some article of commerce?

Mr. PEPPER. Mr. Chairman: It is perfectly well settled, as I understand it, in the law of corporations that a contract made with a corporation by any officer or director is voidable and may be set aside by the vote of the stockholders.

Mr. FISHER. Mr. Chairman: But it is not on the ground of immorality?

Mr. PEPPER. Mr. Chairman: Yes, it is on the ground that one who is made the custodian of the interests of the stockholders should not take advantage of his office to have dealings of his own with the body corporate. There is a line of decision to the effect that contracts of this sort are voidable even in the case of private corporations.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVII, SECTION 7.

The CHAIRMAN. The next section in order for consideration is section 7 of article XVII of the Constitution, the report of Committee No. 4 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 7. No discrimination in charges or facilities for transportation shall be made between transportation companies and individuals, or in favor of either, by abatement, drawback or otherwise, and no railroad or canal company, or any lessee, manager or employe thereof, shall make any preferences in furnishing cars or motive power.

On the question,

Will the Committee adopt the report?

Mr. FOX. Mr. Chairman: I would just like to ask whether it would not be well, in view of the suggestion Mr. Pepper made a few moments ago, to include public service corporations in addition to railroad and canal companies?

Mr. FISHER. Mr. Chairman: That is the law, that is the statute law now.

The CHAIRMAN. That is the Public Service Commission ruling, of course.

Mr. PEPPER. Mr. Chairman: We have been considerably embarrassed in determining what to do with declarations of this sort, which are obviously sound, which cover only some of the objects to which they should apply, and which, when you attempt to extend them by amendment, raise all sorts of difficulties in your mind as to whether your amendment is not misleading because it does not go far enough. It is for this reason that in the case of the corporate officers section we resolved the question in favor of recommending the omission of it. In the present case, we propose, so far as this change goes, to keep the declaration in and trust to the general assembly to carry the principle of the declaration out, so far as it is in the public service act. It may possibly be better to amend this constitutional anti-discrimination provision so as to make it of general application. That could be done, and if it is the pleasure of the Committee of the Whole, we will attempt it.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVII, SECTION 8.

The CHAIRMAN. The next section in order for consideration is section 8 of article XVII of the Constitution, the report of Committee No. 4 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 8. No railroad, railway or other transportation company shall grant free passes, or passes at a discount, to any person except officers or employees of the company.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: With the permission of the Commission I will ask to withdraw for the present the recommendation of the committee on the subject of section 8. The reason for this is that the control of public service companies within municipalities is one which is under consideration by the subcommittee to which the whole subject of municipalities has been referred. It seems to me, sir, though I have not had the chance to consult with my associates of the committee, that we will have a more intelligent discussion of the whole subject on this particular question of the regulation of street railway corporations in municipalities when we have the whole municipal and home rule question before us.

SECTION 8, ARTICLE XVII TO BE RE-REFERRED.

The CHAIRMAN. Is there any objection to the withdrawal of this question from the consideration of the Committee of the Whole? The Chair hears none, and the Committee of the Whole will recommend that this section is referred back to the committee.

ARTICLE XVII, SECTION 10.

The CHAIRMAN. The next section for consideration is section 10 of article XVII of the Constitution, the report of Committee No. 4 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 10. No railroad, canal or other public service corporation, in existence at the time of the adoption of this article, shall have the benefit of any future legislation by general or special laws, except on condition of complete acceptance of all the provisions of this article.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: "Public service corporation" is substituted for "transportation company" so as to make it conformable with the enlarged scope of the article. I might say, sir, on behalf of the committee that this is one of those sections, of which there are several in the Constitution, which would be meaningless unless another new Constitution was to be voted upon by the people. If in the ultimate issue of our deliberations specific amendments were to be proposed, perhaps a section like this would not have to be included among them; but if, on the other hand, an entire Constitution was to be submitted, then such provisions as these ought to be included.

Mr. FOX. Mr. Chairman: May I ask the chairman of the committee whether they considered striking out the words "transportation companies?" Possibly some question may arise as to street railways.

Mr. PEPPER. Mr. Chairman: Judge Fox will observe that while we do strike out "all other transportation companies" we substitute for it "all public service corporations," which we thought would include transportation companies and all other forms of corporations engaged in public service.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVII, SECTION 11.

The CHAIRMAN. The next section in order for consideration is section 11 of article XVII of the Constitution, the report of Committee No. 4 being that this section shall be stricken out.

The Secretary read the section as follows:

Section 11. The existing powers and duties of the Auditor General in regard to railroads, canals and other transportation companies, except as to their accounts, are hereby transferred to the Secretary of Internal Affairs, who shall have a general supervision over them, subject to such regulations and alterations as shall be provided by law; and, in addition to the annual reports now required to be made, said Secretary may require special reports at any time upon any subject relating to the business of said companies from any officer or officers thereof.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: I might say, by way of explanation, that this section is the one that transfers to the Secretary of Internal Affairs the old powers of the Auditor General in the case of railroads, and makes provision for the exercise by the Secretary of Internal Affairs of the powers which are now actually exercised by the Public Service Commission. It seems to us that it would be wise to strike out this section and leave the duties of the Secretary of Internal Affairs to be made the subject of a section in a different part of the Constitution.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVII, SECTION 12.

The CHAIRMAN. The next section in order for consideration is section 12 of article XVII of the Constitution, the report of Committee No. 4 being that this section shall stand without amendment.

The Secretary read the section as follows:

Section 12. The general assembly shall enforce by appropriate legislation the provisions of this article.

On the question,

Will the Committee adopt the report?

It was adopted.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress; with the recommendation that section 7 of article XVI and sections 1 and 8 of article XVII be re-referred to committee.

SECTIONS RE-REFERRED.

The CHAIRMAN. In accordance with the recommendation of the Committee of the Whole, section 7 of article XVI and sections 1 and 8 of article XVII are re-referred.

PROPOSED AMENDMENT TO SECTION 8 OF ARTICLE XVI.

Mr. PINCHOT. Mr. Chairman: In connection with the whole question of the treatment of water power companies, stream pollution, and so on, which is still to be brought up before the Commission, and in view of the fact that section 8 of article XVI has already been adopted in its present form, I want to ask that the amendment which I will read be referred to Committee No. 4 in connection with that article. The amendment is as follows:

"The general assembly may by general laws grant the right of eminent domain to any municipality or any other political subdivision of the state, but no right of eminent domain shall ever be granted to any corporation engaged in private business, or to any public service corporation, except to railroad, canal or telegraph and telephone companies; but the general assembly by general laws may provide for the exercise of the right of eminent domain by the state at the expense of a public service corporation, and grant to such corporation the rights or privileges thus secured; but no such grant shall extend beyond the life of such corporation, nor in any event longer than fifty years."

The CHAIRMAN. The amendment will be referred to Committee No. 4.

ADJOURNMENT.

Mr. FISHER. Mr. Chairman: I move that the Commission do now adjourn until 11.30 o'clock Tuesday morning, January 27, 1920.

Mr. REED. Mr. Chairman: I second the motion.

Whereupon, at 5.50 o'clock P. M., the Commission adjourned until 11.30 o'clock Tuesday morning, January 27, 1920.

Senate Chamber,
Tuesday, January 27, 1920.

The Commission met at 11.30 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—14.

Alter, Carson, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Smith, Stackpole, Thorpe, Schaffer (Chairman).

ABSENT—10.

Connelly, Cuyler, English, Perrine, Pinchot, Reed, Sulzberger, Tyson, Voll, Warburton.

The CHAIRMAN. A quorum of the Commission being present, the Commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Has Committee No. 1 anything to report at this time?

Mr. ALTER. Mr. Chairman: Committee No. 1 has nothing to report.

The CHAIRMAN. Has Committee No. 2 anything to report?

Mr. CARSON. Mr. Chairman: Committee No. 2 has nothing to report at the present time.

The CHAIRMAN. Has Committee No. 3 anything to report?

Mr. THORPE. Mr. Chairman: Committee No. 3 has nothing to report at the present time.

The CHAIRMAN. Has Committee No. 4 anything to report?

Mr. PEPPER. Mr. Chairman: Committee No. 4 has nothing to report at present, sir.

The CHAIRMAN. Has Committee No. 5 anything to report?

Mr. SMITH. Mr. Chairman: Committee No. 5 has nothing to report at present.

ANNOUNCEMENT BY CHAIRMAN.

The CHAIRMAN. The Chair would like to call the Commission's attention to the state of the work before the Commission. We have acted upon and adopted one hundred and fifty-nine sections of the present Constitution; there are twenty-eight sections on the calendar; there are thirty-five unreported sections; fifteen sections have been referred to other committees, and nine sections have been dropped. It seems to the Chair important that all the committees shall meet and complete their reports if it is at all possible by the time of next week's meeting. In that way we will be able to have everything on the calendar and clean up the work. If this is not done, I am afraid we will have no calendar the week after next. If the committees can complete the work pending before them, which is engaging their attention, the reports can be made next week and it will very greatly forward the work.

Has any Commissioner anything to bring before the Commission at this time?

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

ARTICLE III, SECTION 15.

The CHAIRMAN. We will now resume consideration of section 15 of article III of the Constitution, the section with amendments being introduced by Mr. Pepper in Committee of the Whole.

The Secretary read the proposed section as follows:

Section 15. On or before March 1 of each year in which the legislature shall be in regular session the Governor shall submit to the general assembly a budget. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the two fiscal years next ensuing, excluding expenditures for charitable and educational purposes. The Governor shall, at the time of presenting the budget to the general assembly, submit a proposal for such appropriation for charitable, benevolent and educational purposes as he shall think proper and shall also submit a bill containing the proposed appropriations for the fiscal years covered by said budget, and a bill to carry into effect his said proposal as well as any bill or bills embodying any recommendations he may desire to make as to sources of revenue.

Immediately upon receipt of the Governor's budget the presiding officer of the House of Representatives shall introduce in such House the said appropriation bill and also a bill relating to sources of revenue submitted by the Governor.

The general assembly shall have power to increase, decrease, strike out or otherwise alter any item in the appropriation bill, or add new items thereto. Until the appropriation bill shall have been finally acted upon by both Houses of the general assembly, neither House shall consider any appropriation measure, unless the same shall be solely for the immediate needs of the general assembly, or shall have been submitted to the general assembly by the Governor with the request that it be acted upon in advance of the appropriation bill.

The final adjournment of the general assembly shall not take place until a period of ten days shall have elapsed after the appropriation bill shall have been finally acted upon by both Houses of the general assembly and shall have been presented to the Governor.

On the question recurring,

Will the Committee adopt the proposed section?

BUDGET.

Mr. McCORMICK. Mr. Chairman: This section, it seems to me, will have to be discussed with section 16 which follows, and also be

discussed with section 17, which has already been adopted. It seems to me that when you study these three sections together you become greatly confused. In other words, they conflict with each other, and it is difficult to get exactly at the meaning. I understand that the purpose of this section is to place in the Governor's hands practically the full responsibility of making these appropriations to private charities. But if we permit section 17 to remain as it is, we give the legislature the power to make appropriations to private corporations and associations in this commonwealth not under its control and engaged in work or service deemed by the general assembly to be for the public good, "provided, that such work or service conforms to such standards of efficiency as may be prescribed by general law." There the general assembly sets up the specification, while in this section we put into the hands of the Governor the power practically of naming the institutions that will receive this aid, naming practically the specifications under which they shall receive it. In that same section you show later that the legislature has the right to increase, or decrease, or strike out, or in any other way alter any item in the appropriation bill, or add new items thereto, thus still retaining the legislative power.

The CHAIRMAN. The Chair understands that that refers only to the appropriation bill.

Mr. McCORMICK. Mr. Chairman: Only to the appropriation bill, but section 17 sets up the standard of excellence under which these appropriations are to be made. You cannot adopt, it seems to me, this section 15 unless you know what is contained in section 16, which further controls the method under which these appropriations are distributed. There you take away from the legislature the power of increasing the aggregate amount, and you also take away from it the power to add any particular institution which they might desire to add. I am raising the point to see whether I have correctly understood the meaning of these three sections. It may be possible that I have not, but that is the way I studied the question, and it seems to me that they are all contradictory. While I am in sympathy with the proposed attempt to place the responsibility so that the people of the state may know who is responsible for the situation that exists, and I think it is an attempt to meet the condition as it exists today, I also think that it is fundamentally wrong in principle to place into the hands of an individual the distribution of millions of dollars of the taxpayers' money. The same principle is there as is involved in the legislature's doing it, and it does seem to me to be an attempt to protect something that today is recognized as an evil. You cannot change the principle that still exists. You are giving into the hands of one man a tremendous power and responsibility, and in my opinion it is illegal and against a democratic form of government to distribute millions of dollars upon his own specification to which these institutions must conform; give him power to create the basis upon which the money shall be divided so that by taking these specifications just as an architect in building a building can make such specifications that only one or two bidders can bid, so only one or two institutions might conform to requirements.

While this principle cannot be used in many cases, yet we are making a Constitution, and while it might be perfectly workable under one Governor, other Governors are going to be elected, and you

not only put that man in a very difficult and embarrassing situation so far as political coercion is concerned, but before that man is elected institutions or groups of citizens can put up before the people of this commonwealth a man who is in sympathy with the things they desire to obtain from the Governor or from the legislature. Today the system is running into millions, and in ten or fifteen years no one knows how great an amount might be at issue. I want to call these points to the attention of the Commission before it adopts this thing to see again whether they do not recognize that this is simply a plan to try to make better something that is fundamentally wrong in principle and that it cannot be done. I would like to ask the Committee to correct me if I am wrong in my statement, but I think these three sections are conflicting as they now stand and are practically unworkable. It may be that I have misread them.

SECTION 15 OF ARTICLE III POSTPONED.

Mr. PEPPER. Mr. Chairman: I move, if it is in order, that further consideration of section 15 be postponed for the present, and that the Committee proceed to the consideration of the proposed new section 16. If that is seconded, I will state my reasons.

Mr. McCORMICK. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. PEPPER. Mr. Chairman: I do that for the reason that if section 16 as proposed, or in some modified form, should be rejected, then it is quite true, as Mr. McCormick has suggested, that the changes in section 15 would become inappropriate and should also be rejected. In other words, the changes in section 15 are modal merely. The important change is contained in section 16.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE III. SECTION 16.

The CHAIRMAN. We will resume the consideration of section 16 of article III of the Constitution, the section with amendments being introduced by Mr. Pepper in Committee of the Whole.

The Secretary read the proposed section as follows:

Section 16. In submitting his proposal for appropriations to charitable, benevolent and educational uses the Governor shall indicate the basis upon which the cost of approved work or service to be done or rendered by designated corporations and associations is to be computed and shall recommend an aggregate sum to be appropriated and distributed among said corporations and associations upon such basis. The general assembly may decrease but may not increase the aggregate item thus recommended, but shall in no case appropriate any sum to a corporation or association except to such as may be designated by the Governor, and except in conformity with the method so recommended. Action upon the bill embodying said proposal shall be taken by the general assembly at the time that action is taken upon the general appropriation bill.

On the question recurring,

Will the Committee adopt the proposed section?

APPROPRIATIONS FOR CHARITABLE AND EDUCATIONAL INSTITUTIONS.

Mr. PEPPER. Mr. Chairman: This section will be considered upon the theory, and only upon the theory, that appropriations are hereafter to be made for charitable and benevolent purposes to institutions not wholly under the control of the state. I for one venture to hope that those who are opposed to the continuance of such appropriations will for the time being devote themselves to an effort to devise a sound method of administering such appropriations, if they are to continue. I can entirely understand how foreign it is to the thought of any member of the Committee, who is opposed to charitable appropriations altogether, to consider the method of administering such appropriations if they are to continue; but if, on the other hand, when you are discussing the application of a principle which for the time being the Committee has already tentatively settled, you are at every stage of the discussion making reference to your disapproval of the fundamental principle, you are not likely to get the mind of the Commission focused upon the real fact in hand, which seems to me to be the devising of a wise system of administration upon the theory that we are for the present at least to stand by our conclusion that these appropriations are to be made. Now, it seems to me, Mr. Chairman, that the real vice of the system that exists is this; that it loses sight of the fact that the supervision of public service rendered by individuals, not wholly under the control of the state, but in part supported by state funds, is an executive function. Heretofore the attempt has been made to deal with it as a legislative function. The legislature has been the body first approached when any institution desired to receive grants from the state. The battle has been fought out in the legislature, and then the recommendation of the legislature in the form of an appropriation would go to the Governor, and he has to discharge the secondary duty of revising the work done by the legislature. I submit that that system is wrong, because fundamentally the problem is a problem belonging to the executive. It is a problem of the administration of institutions engaged in public service, and therefore it seems to me that the primary responsibility should be placed upon the executive of determining, through such agency as may be created for the purpose, what institutions are to be recommended by him as recipients of state aid, and secondly what the basis is upon which such state aid is to be given. I quite agree with the gentleman from Dauphin that there is placed upon the executive a very grave responsibility. I quite agree that it represents a radical change from the system which has heretofore prevailed. I submit, however, that the responsibility is no greater than it must necessarily be under any system of executive administration of state institutions. If these institutions were to be taken over by the state and you were to convert the whole matter of charitable administration into a state activity, the result would be, not that you would decrease all that, but you would increase even beyond the limit of this proposal the responsibility that may rest upon the executive and any agency operating under him and responsible to him.

In the second place, I suggest that the existing system is bad, not merely because the applicants for grants go first to the legislature, and second to the executive, but also because it is a bad thing to have applicants for grants running to and fro either from the legislature

to the executive or from the executive back to the legislature. It seems to me that the system adopted should place the responsibility upon the executive, and place it upon him so definitely that he must make the recommendations or proposals upon which the legislature is to act, and the legislature must be limited to rejecting his proposal or modifying it by decreasing the amount of appropriations which he recommends, but that the legislature should not have the power of increasing the appropriations suggested, and should not have the power of dealing with charitable institutions except in conformity with the plan proposed by the governor. Now, that is the basis upon which this resolution is drafted. Of course, it is imperfect in form and in detail, but at least it will serve to guide the discussion of the Commission in arriving at some wise solution of this difficult problem. Mr. McCormick has suggested that the proposed section is in conflict with the provision of section 15. It may be that he is right. No such conflict is evident to me at the moment. If section 15 is amended in the way proposed there will come from the Governor simultaneously the appropriation bill, which when acted upon must receive a majority vote in order to pass, and the proposal for charitable, benevolent and educational appropriations, which is in the nature of a separate budget, that, if it is adopted, must be adopted by a two-thirds vote. That is fundamentally the reason for separating the two. When the Governor submits his proposal to the legislature for charitable appropriations, he specifies the aggregate sum which he recommends for the administrative purposes which he has in view, and he submits also the basis-of-cost calculation of free service which lies at the bottom of his recommendation. He designates the institution and he specifies in the case of each institution his recommendation as to whether in each case the basis of free service applies to that institution. The legislature may decrease, as I have said, the total item, may decline to appropriate sufficiently large amounts to meet the charge of the cost, but may under no circumstances increase the recommendation, and the appropriation is not to be made in favor of institutions added in the legislative halls as the result of pressure which has failed with the Governor. We must limit their action to those institutions which have passed muster with him, the theory being that in making up his list he reflected the judgment and the experience of the administrative or executive agency which acts under him and reports to him. Mr. McCormick further says that the section under consideration is in conflict with section 17. It may be so; and if so, of course, the inconsistency must be eliminated. There must be a reconciliation.

Mr. McCORMICK. Do you think it is inconsistent?

Mr. PEPPER. I have not thought so, Mr. McCormick.

Mr. McCORMICK. I am asking for advice.

Mr. PEPPER. Mr. Chairman: Well, I have not thought there was any inconsistency for this reason: It seems to me that section 17 states a principle. Section 17 is now in the form in which it was put by Dr. Thorpe's resolution, which was adopted last week. That states the general principle which justifies a legislative appropriation of state funds. That appropriation is thought by some members to be unsound, but for the moment it is the principle upon which we are working. It states the principle, I say, upon which the appropriation is to be made. Section 18 restrains the legislature from ap-

appropriating to sectarian or denominational institutions; but, as I see it, neither of those sections, one of which affirmatively gives the power to the legislature to appropriate under certain circumstances, the other of which restrains the legislature from appropriating to a prohibited class, is inconsistent with the theory of section 16, which prescribes the way in which the legislation is to come before the legislature for action; namely, it must come upon executive suggestion and upon the basis of executive responsibility. The legislature could not consistently with section 18 act affirmatively on any recommendation of the Governor which specifies a sectarian or denominational institution; reciprocally the legislature could not act favorably upon any recommendation of the Governor which has the evidence of carrying funds to an institution which did not come within the class described in section 17. Let me say in conclusion that in my judgment the legislative act in this matter is incidental to the discharge of the executive function, is auxiliary to the action of the executive, and is not itself a matter of primary concern. Under the old system the whole thing was the appropriations; that is what everybody was after, and that is what most everybody got. The real theory, it seems to me, is administration, and that involves executive responsibility. The legislature acts only as it acts in the case of the appropriation bill; namely, in the way to enable the carrying out of a function of government. The function of the legislature under such a section as this would be to carry out the function of government resting primarily upon the executive and to enable him to carry out his administrative oversight and control in the way that the Constitution indicates. Those are the thoughts which are intended to be suggested by this amendment.

Mr. McCORMICK. Then, Mr. Pepper, the sentence which reads "The general assembly shall have power to increase, decrease, strike out or otherwise alter any item in the appropriation bill or add new items thereto," only refers to the general appropriation bill? Is that correct? There are two bills, a general appropriation bill and the bill containing the proposal made by the Governor, and this clause, this sentence does not affect the appropriation to privately controlled institutions?

Mr. PEPPER. If the intention is not sufficiently expressed, there ought to be an amendment so it becomes clear.

Mr. McCORMICK. Mr. Chairman: There is that doubt in my mind.

Mr. PEPPER. The intention, Mr. Chairman, is that section 15 shall mark a clean-cut distinction between the thing therein described as a budget and the thing therein described as a proposal for appropriations for charitable and other uses, and submitted simultaneously with the budget. Action by the legislature is taken separately upon the budget and upon the proposal in the form of action upon the bill known as the general appropriation bill intended to give effect to the budget, and another bill carrying charitable appropriations intended to give effect to the proposal. The former may be adopted by a majority, the latter by a two-thirds vote only, and in regard to the latter; namely, action by the legislature on the proposal, the intent is that there shall be no power to increase the amount recommended by the Governor. There is a power to decrease or strike out, but not in the case of particular institutions, but only

by reducing the whole item. There is no power to legislate in favor of a particular institution excepting in accordance with the general plan.

Mr. McCORMICK. The point, Mr. Chairman, was this; while I am in sympathy, provided the question of principle is definitely determined, with this attempt to correct the system as it now exists, yet another question of principle comes up in my mind. We are dealing with the Constitution, and that question is this: What is the difference between dividing the functions of the legislature and the Governor in reference to appropriations of this character? In other words, it certainly is a legislative function to make appropriations. It is so in our national government, and it is so in our state government. The appropriation to privately owned charities is just as much an appropriation in the general sense as it is to carry on the machinery of the government. I cannot see under what principle you can separate the two kinds of appropriations. From a business standpoint, the executive should be able to administer the funds and distribute them in a much more businesslike and capable manner than the legislature would. When you come down to the gist of the matter under the fundamental question of our laws and our theories of government, I cannot get through my layman's head why we are setting up the principle that in certain matters the legislature is supreme, but not in other matters of appropriation; that is, particularly the principal to permit the Governor to make the appropriations and let him say what shall go into the appropriations. If the principle that I have always advocated is defeated and dead forever, then I should like to see some method adopted whereby the Governor can do this, because I believe that he holds the method up to the light of day and the people of the commonwealth can see what is being done, instead of tying it up in the Governor and the chairmen of the appropriations committees of both Houses. Those three men have done it in the past. I would rather have it done by one man. I cannot get it through my head that it does not violate again a principle of constitutional government, which we as supposedly learned members of the Commission should not approve, because we are establishing something here that is to stand, we hope, forever. I would like to hear that matter discussed.

Mr. FISHER. Mr. Chairman: I am not quite sure whether I caught the explanation of Mr. Pepper. If I did it seems that there are two purposes set forth in section 15. Two distinct subjects are dealt with. One is the budget, the general appropriation bill, which is the budget proper. The other is the appropriations to charitable and benevolent institutions, which is not regarded as a part of the budget at all. Now, I confess that I was somewhat confused. It seems to me there is a conflict between the provisions of this proposed new section 16 and the third paragraph of section 15. I have been wondering, inasmuch as Mr. Pepper has undertaken to do the work of drafting, whether it would not be conducive of clarity if this proposal for the charitable and educational institutions is severed entirely from the budget and dealt with separate and apart.

Mr. PEPPER. Mr. Chairman: The amendment to section 15 was intended to accomplish just that result. If it is not successfully accomplished, then as I said a few minutes ago we ought to change it, but the reference to the charitable appropriations in section 15 was

a reference merely for the purpose of excluding it from that section, and not for including. The section begins in this language, after the initial statement: "The budget shall contain a complete plan of proposed expenditures and estimated revenues for the two fiscal years next ensuing, excluding expenditures for charitable and educational purposes." This is first submitted with the budget and is not to contain the recommendations on that subject. Then the provision is that, "The Governor shall at the time of presenting the budget submit a proposal upon the subject of charitable appropriations." Then having stated that this is to be the case, the section drops further consideration of the proposal and leaves it to be dealt with in section 16 which follows. Now, it may be that some method could be devised of separating them even more clearly than is there done. If so, I think such other methods ought to be adopted, because I quite agree with Senator Fisher that the two things are distinct in their nature and ought to receive distinct treatment.

Mr. THORPE. Mr. Chairman: There is a little matter here that is fundamental, which perhaps might be escaping the attention of some of the Commission. The question of the budget, Mr. Chairman, is quite a modern conception. If I am correct in my memory, the question of the budget was first proposed in the English constitutional procedure about the time of the great Revolution, and if I understand correctly the Congress of the United States is now considering the proposition of a budget. It has been suggested by various presidents. There is a fundamental question here, and as the gentleman from Philadelphia says, is there not a question here which is extremely difficult to solve, and are we not in peril of confusing two very important matters? Now, the agency of the people is the legislative, or the executive, as you please. It is customary, Mr. Chairman, to give the agency of taxation to one group and the agency of military control to another. If my memory is correct of the history of English constitutional law, benevolent and charitable appropriations came quite late in history, that so far as we know in the start all gifts were gifts from the crown and emanated from the income from crown lands, and even the army was supported, so far as it was supported at all, by a gift from the crown. Little by little the legislative encroached upon and differed with the use the crown made of this money and other functions and prerogatives of the crown, and insisted upon determining the use that should be made of it. Out of that grew precedents strengthened with the years until the appropriation bill became a function of the legislative rather than a function of the executive.

Now, Mr. Chairman, is it not true that the executive to this day exercises ministerial rather than executive functions? In the ministerial sense he does certain things, in the executive sense he does certain things; and when in later years, especially in the last thirty years in this country, we so distrusted the legislature that we turned to the executive for relief, it is a question of distrust that we are dealing with, we want the moneys paid by taxation to be devoted to certain purposes. Now, as citizens of the commonwealth, we differ in opinion as to the functions of the state, and having, as Mr. Pepper says, at least tentatively settled upon a definition of the certain functions of the state we proceed to say who shall best dispense the money raised by taxation. Now, is it not true that we waste time,

waste opportunity, by not making very plain in the Constitution whether the Governor as an executive is to determine how much shall be paid for any purpose whatever; and if so, shall he be perfectly free, shall he be subject to the perils that the gentleman from Dauphin referred to, the pre-arrangement of his election, or shall we say we trust the executive, whoever he may be, and surround him with such limitations that it is practically impossible for him to go as wrong as the legislature has hitherto gone wrong? Now if you can do that, and here is the place to do it, we shall accomplish a great piece of constructive organic law. If not, we are simply repeating old errors under new names, if we are going to say the ministerial or executive shall do thus and so; and that is what it means if we are to say to the legislature, "We cannot trust you to do it, and therefore the Governor shall do it, and you shall not trespass upon his prerogative." Very good. That is just exactly what we are doing; we are settling a great fundamental principle that has puzzled very great constitutional lawyers and jurists for a long time.

Mr. ALTER. Mr. Chairman: I am entirely opposed to the principle which is embodied in section 16, by which it becomes the function of the Governor to recommend the aggregate amount to be appropriated for charitable, benevolent and educational purposes and to designate the institutions among which that aggregate appropriation shall be divided, and then to limit the legislature to the one sole power of reducing that aggregate. As has been indicated, Mr. Chairman, this is another step in the direction of magnifying the executive at the expense of taking away from the powers intrusted to the legislative department of the government. I am not surprised that it shocked even the mind of one of the new school of the followers of Jefferson, though they follow him afar off. Mr. Chairman, I feel that section 15 should be made to conform to the provisions of section 16. In section 15, as the Committee has adopted it, and as the gentleman from Philadelphia embodied it in this suggested draft, after the Governor has submitted his budget, the legislature has the power to increase, decrease, strike out or otherwise alter any item in the general appropriation bill; but when it comes to this matter of charitable and educational appropriations, then the Governor alone can designate what institution shall participate in its bounty. The only power intrusted to the legislature is to decrease the aggregate of the proposed appropriation. Now why? The gentleman from Dauphin suggests that the people perhaps would prefer that this distribution should be in the open light of the Governor's office instead of in the Senate and House of Representatives.

Mr. Chairman, has it been your observation that there is more of the open light of day in the Governor's office than in this chamber and the hall of the House? Would there be any danger of gentlemen coming down to the gentleman from Dauphin with tears in their eyes and saying that they could not vote for a bill that he wanted them to vote for, for fear the Governor would not put their institutions into the general appropriation bill? I would rather trust, in the lapse of years, the Senate and the House of Representatives, where every man has equal rights on the floor—

Mr. McCORMICK. Mr. Chairman: May I correct an impression that I see has been created by my remarks? What I meant by the

light of day was that under the budget system the Governor prepares a budget upon which he can stand before the people of the state. In the early days of the legislature that budget is sent to the Senate and House, and published in every newspaper of the commonwealth. Then the House and Senate criticise that budget. When I speak of this method as being one that submits this question to the light of day, I still believe it, and I still think you have created something in the early days of the session which the Governor must defend, something different from the present system, when nobody knows what the appropriations are to be. Now they come in the last few days and at a time when nobody has an opportunity to study things and they are rushed through during the closing hours of the legislature. That is what I meant to say. I am sorry if you misunderstood me.

Mr. ALTER. Mr. Chairman: I quite agree that it is desirable to have the Governor submit a budget both as to the matter of general appropriations and as to the matter of charitable appropriations; but the Governor once having submitted the budget, then why prevent the people's representatives in the Senate and House of Representatives from modifying that budget? As I was saying when the gentleman from Dauphin arose, I would rather, in the long lapse of years, trust to the Senate and House of Representatives, where a member has rights equal with those of every other member upon the floor to demand that the truth be known, to show the reasons why a certain institution should be upon the list, or to show reasons why certain institutions should be stricken from the list; I would far rather run the risk of any coercion or corruption resulting from that method than to put it in the power of the Governor, as this section 16 would put it, to make out a list with the legislature having no power to take a name from the list or to put a name on that list, but merely to permit the legislature to reduce if it sees fit the aggregate, and in no other respect to meddle with this work which had been done in the Governor's office. It is proceeding in the wrong direction, Mr. Chairman, and worst of all to my mind it is increasing the prestige of the executive at the expense of the prestige of the legislative department. The gentleman from Philadelphia, Mr. Pepper, says that plans of this kind are the outgrowth of the distrust of the public of the legislature. Well, maybe that is true, Mr. Chairman; but the more we provide for that distrust, the more we take away the powers of the legislature because of that distrust, then the more we will increase the reasons for that distrust, because the more the prestige of the legislative department is reduced the cheaper will be the material which will be sent to the legislature.

Mr. PEPPER. Mr. Chairman: If the gentleman will permit me, I do not think I expressed myself in the way which Mr. Alter understood me. I do not recall that I spoke of popular distrust of the legislature. That was not in my thought, Mr. Alter; if I used that expression it was used inadvertently.

Mr. ALTER. Mr. Chairman: The gentleman surely used that expression.

Mr. PEPPER. Mr. Chairman: It was Dr. Thorpe.

Mr. ALTER. Mr. Chairman: I ask the gentleman's pardon.

I am distressed by the attitude which many people take toward the legislature. I remember just after the conclusion of my third term of service at the other end of the capitol I read in a Philadel-

phia newspaper that a gentleman from Philadelphia with whom I had served two or three sessions over there was likely to be appointed tipstaff in the orphans' court of Philadelphia county. The paper went on to say that this gentleman had many friends in the city who would be greatly pleased at his promotion. Now, I hope this Commission will not do anything which will keep the tide of public sentiment drifting in that direction, but rather if possible do something which will turn the tide back in the other direction and make the office of legislator in the public esteem something near what it ought to be. Before taking my seat, Mr. Chairman, I would like to hear the gentleman from Philadelphia in connection with this section 16 say what his thought is as to how the legislature would comply with the concluding sentence of section 16, which requires that action upon the general appropriation bill which can be passed by a majority, and action upon the charitable appropriation bill which requires a two-thirds vote, shall be taken by the general assembly at the same time. I was curious to know what the gentleman's thought was as to the procedure by which that could be carried out.

Mr. PEPPER. Mr. Chairman: I think that that language obviously is infelicitous. The thought that was attempted to be expressed was to couple up section 16 and section 15, in so far as there is a provision that the general appropriation bill must be acted upon so many days before the expiration of the legislative session; the thought being that that provision should be applicable also to the proposal for charitable appropriations, not that there should be simultaneously an attempt to have a majority and a two-thirds vote.

Mr. STACKPOLE. Mr. Chairman: I understand that the draft prepared by Mr. Pepper is largely suggestive in order that we may get to some point in framing these sections. I confess that I am very much in sympathy with Mr. Alter. I cannot quite see the concentration of so much power in the executive. It seems to me that if we want to create the big stick very formally and very effectively by placing in the Governor's hands the specifications as to charitable appropriations and thereby give him control of the legislature, that the legislature might just as well adjourn the first day and go home, because he would be successful, I think, in indicating the character of all legislation throughout the session, because he would be able to say to a member or a senator under certain conditions, "I cannot see it your way, as to a particular piece of legislation." I am indicating what might happen. I rather suspect it has happened with less power than this bill gives the Governor. I am not referring to any particular Governor, but I have known some Governors in my day, and they did not hesitate to use their power to influence legislation. I believe Judge Gordon might have some interesting comment, if he chose to enter into reminiscence at this time. I believe, Mr. Chairman, that we ought to proceed with great care. Mr. Alter has indicated very clearly, it seems to me, the great danger that exists in this proposal, and I think that the legislature can be trusted. It is not a perfect body, but it has managed to work throughout the years; we have lived through it. And now, if we are going to continue, and I assume we are going to continue, as far as this Commission is concerned, the present system of appropriations, then I fear very much that we will make a great mistake in turning the whole job over to the Governor. As I indicated the other day, we should require a

Solomon in the office of the Governor to get through with this job. He would be pestered from the day the session begins until it ends. His office would be crowded with anxious members and senators, and I suspect there would be a pathway leading from both bodies to the executive office to discuss the important matter of "my appropriation bill." I can very readily conceive of other bills much more important, perhaps, affecting the welfare of the people of the whole state, being held up until the legislative body chose to indicate its position. I hesitate to differ with my much-esteemed chairman on this matter, but I feel that it is a dangerous proposal and ought not to be considered now.

The CHAIRMAN. The Chair would like to make a suggestion to the effect that, as this Constitution must be recommended by the legislature, is it likely that the legislature would recommend a Constitution reflecting so much upon itself?

Mr. PEPPER. Mr. Chairman: Just a word to correct a misapprehension which my remarks evidently have created. I have not made this proposal upon any theory of distrust for the legislature. I made the proposal in order to draw the minds of the Commission to this point; namely, that heretofore the subject with which we are dealing has been dealt with as a question of appropriation by legislative action. I want the Commission to think whether or not it is fundamentally a problem of executive administration. That is to say whether it is not a case in which we crossed the bridge, which the gentlemen are now hesitating to tread upon, when we voted in favor of the principle of continuing state aid to these organizations, and if it does turn out after careful consideration that it is unwise for us to confide an executive job to the executive, then I for one should think that was strong reason for reconsidering our action on the fundamental question of whether we should make any of these appropriations at all.

Mr. CARSON. Mr. Chairman: I do not wish to delay a recess, but my mind is in a state of extreme doubt, and in fact I might say that I want to clear up my own mind as to one or two matters here, so that I can intelligently consider the effect of the language used in these two sections. Now, if I understand it, the separation which Mr. Pepper has indicated in section 15 between what is stated there as to a budget, and what is subsequently stated as to an absolutely independent matter, proposals for appropriations to charitable and benevolent and educational purposes, would be more clearly indicated if in section 15 the two subject-matters were divided from each other by a separate paragraph. If for instance that which refers to the budget terminated with the word "purposes" in the eighth line, and what relates to the proposals for charitable and educational and benevolent purposes should be put into an entirely new paragraph, then we would have standing out, physically presented to the eye by the arrangement of the type, two distinct subjects, and that would sharpen the distinction which Dr. Thorpe so admirably stated, but which I confess until he did state it I did not perceive it as clearly as I now do. Now, the purpose of the budget, as I understand it, is to give a legislative body some sort of definite apprehension of what, after careful study of the matter, both as to revenues and expenditures, the executive deems to be the practical limit of the exercise of legislative power in the way of appropriating public money. In

other words, the budget is not to be considered as anything more than an advisory schedule, so to speak, presented to the legislature for its consideration. The Governor says, "Now, I have carefully presented this as a business matter." We are trying to put the government on some sort of business basis, just as a large, prudent business house would go to work and estimate in advance what its possible expenditures for its business will be, and then confine those expenditures, after minute and careful consideration in order to avoid disaster, and carefully analyze and review the resources of that business in order to meet those expenditures. Now, that is advisory. I can well understand the advantage of the Governor's sending such information to the legislature, but I cannot understand that the executive function in regard to that has begun in the way of administering that fund until the legislature itself has acted in the matter. Now, so far as the budget is concerned, you intrust the legislature with full power. The legislature has "power to increase, decrease, strike out or otherwise alter any item in the appropriation bill or add new items thereto."

Therefore, while they treat with respect the Governor's recommendation as to the budget, their power to deal with it is unimpaired. They may increase or diminish, they may strike out or alter, and the Governor cannot begin his executive functions until the legislature has placed the means of so doing in the shape of the fund under his executive control. But when you come to preparing the proposal for charitable, benevolent and educational uses, then you do under this section 15 change your position most radically. It is not simply advisory action on the part of the Governor that I suggested. He is not confined to saying, "I suggest thus and so," but you enlarge his power by declaring that the Governor shall designate the recipients of the state appropriations for charitable, benevolent and educational purposes. To a certain extent that is a sacred list. You can neither strike from it nor can you add to it. In addition to that, you still limit the power of the general assembly by saying that the amounts which the Governor has after study appropriated to each one of these specific institutions, the legislature may decrease, but cannot increase. In other words, there is a clamping of restriction, so to speak, on legislative action in regard to educational and benevolent and charitable appropriations which do not exist as to the budget. I confess that what Mr. Alter has said out of his legislative experience strikes me with a great deal of force. I should like to know on what fact or experience the exceedingly careful and conscientious chairman of this committee, who always presents matters after the fullest deliberation and selects his words with great care, bases his apprehension of the legislature; and why does he allow such full power to the general assembly in regard to the budget, to increase, decrease, strike out or otherwise alter any item in the appropriation bill, and yet deny to that very same body every power except that of decreasing the amounts which are appropriated to charitable, educational and benevolent purposes? Why the difference? Why do you do that?

Mr. PEPPER. Mr. Chairman: Would it be the Chair's pleasure that the question be answered now?

The CHAIRMAN. Suppose you answer the question after recess.

RECESS.

Mr. FISHER. Mr. Chairman: I move that the Committee do now take a recess until 2.30 o'clock P. M.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1.15 o'clock P. M., the Committee took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The Committee reconvened at 2.30 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Committee of the Whole having arrived, the Committee will be in order.

ARTICLE III, SECTION 16.

The CHAIRMAN. The Committee of the Whole will resume its consideration of section 16 of article III.

On the question recurring,

Will the Committee adopt the proposed section?

The CHAIRMAN. When we recessed Mr. Pepper was ready to answer Mr. Carson's question.

APPROPRIATIONS FOR CHARITABLE AND EDUCATIONAL INSTITUTIONS.

Mr. CARSON. Mr. Chairman: I believe Mr. Pepper was about to reply to some remarks that I had made. In order that Mr. Pepper's reply may not be broken I would like to add a word or two to what I previously said. The point on which I would like the chairman to enlighten me is why draw a distinction between appropriations for the budget in the way of the general appropriation bill and the appropriations for charitable, benevolent and educational uses according to a list prepared by the Governor for certain designated charities in amounts which in the judgment of the Governor should be appropriated in the sums recommended? The second purpose is that "The general assembly may decrease but may not increase the aggregate item thus recommended, but shall in no case appropriate any sum to corporations or associations except to such as may be designated by the Governor and except in conformity with the methods so recommended." Now, I confess that I find it a little difficult to justify to my own mind the basis of that distinction. I can understand in a general way the distinction which has been stated between the legislative and executive functions, and that in Mr. Pepper's apprehension the function to be performed in regard to this list of recommendations as to charitable, benevolent and educational institutions is in the nature of an administrative act; but I cannot see how an administrative act is to begin until there is a fund to administer. If an administrator reports no assets in his hands, there is nothing to charge himself with on the debit side of his account, and his powers are in slumber. Now, until the legislature has in some way appropriated money for these specific purposes, there are no funds for the Governor to administer. The legislature, under this

language, can neither add to nor subtract from the list of charities named by the Governor. They cannot increase the amount or vary the amount except in the way of decrease. As I understand it, we have settled, settled as the hope was expressed, settled conclusively, that it is not the intention of this Commission to recommend any line of action which would result in the destruction of the charitable institutions of the state. Now, if you allow to the legislature the sole power of decreasing the amounts which are recommended to them for favorable action by the Governor, and deny the power to them in the matter of further action, on what has been termed here as a distrust of legislative action, you introduce an element of irritation into the problem which might lead a legislature to smart under a denial of power, and finding only one weapon of power in their hands, they exercise that power of decreasing so as to destroy the whole list of the Governor's recommendations, and then the fatal result would be presented of a mutilation of the charities of the state simply because we have put into their hands, so far as the legislature is concerned, the only weapon they have to use; and if they use it in resentment they use it to destroy instead of using it to aid, assist and benefit. It seems to me that there is a fatal contradiction of purposes in this section, which may amount really to a suicide of the very principle we fought for on the floor and endeavored to establish. I add these words so that Mr. Pepper may have the full matter before him for his reply.

Mr. STACKPOLE. Mr. Chairman: Just a word. I think that Mr. Carson has indicated the danger of the legislature's reducing such appropriation, the total to nothing. I think the converse may also be true where the Governor would start in by almost riddling the appropriations by making it impossible for the legislature to do anything more than to pass them as he submits them.

Mr. PEPPER. Mr. Chairman: I would like to remove one misapprehension. Mr. Carson has referred to this pending resolution several times as if it had behind it the weighty support that belongs to the recommendation of the committee. That is not the fact. Whenever I come in with a proposal which really deserves the serious consideration of the body, it will be found to have come from Committee No. 4. In other cases, you can deal as you please with suggestions that are individual vagaries of my own. That is so in this case. The question I want to have decided, and really it is in the interest of clear thinking as much as anything else that I venture to bring the matter forward, is this; whether the question that we are considering is a question of legislative appropriation and the safeguarding of the business of making appropriations, or whether it is the executive task of administering the charitable and benevolent interests of the various communities of the state in so far as the institutions serving them receive state aid. If it is a case in which we are merely dealing with appropriations made by the legislature in the ordinary course of legislative business, then one set of considerations is applicable. On the other hand, if we crossed the bridge when we decided that we were going to continue state aid to different institutions, and superadded the requirement that those institutions must live up to the standards of efficiency, when we decided that they were to be subject to executive inspection, and therefore to executive control, when we decided that those institutions were to be repaid for their public

service on the basis of the cost of that service, whether in so deciding we crossed the bridge which some now hesitate to stand upon, and did turn over this whole matter to the executive for administration. Then when the executive, through the agency that shall be established by law, or any existing agency that may be expanded, makes a survey of the situation throughout the commonwealth, receives the returns from the different communities, decides which institutions are living up to the standards prescribed, and gets the figures from the executive agency showing what the cost of the public service has been in each case, makes up a list of institutions that conform to the standards and reimbursement on account of their expenditure for public service and submits a resulting proposal to the legislature, he is really not inviting the independent exercise of discrimination by the legislature as to whether these things are worthy or not; he is in effect asking the legislature for a vote of confidence or no confidence in the way in which an administrative job is being handled. If the legislature does not believe that the administrative job is being rightly handled they have it in their power to cut the thing, even to the point of defeat. If they think, on the whole, that the thing is being run as an administrative job ought to be run, they will vote according to their discretion and accept the proposal. The distinction seems to me to be clear between these cases in which the legislature exercises this discrimination in legislative matters and those cases in which the legislature either does or does not respond to the request for the means to carry the executive program into effect. That is the basis for the distinction. If it is an unsubstantial basis, the Committee will ignore it. If it is the right distinction, then some better form of expression than the one now before the Committee can doubtless be devised and embodied in it.

RECONSIDERATION OF VOTE ON SECTION 15 OF ARTICLE III.

Mr. FISHER. Mr. Chairman: I move that the vote by which section 15 of article III was adopted be reconsidered.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the Committee adopt the section?

Mr. FISHER. Mr. Chairman: The difficulty, it seems to me, in the discussion of this section, or these two sections, arises from the effect of the motion made by Mr. Pepper to introduce into the budget something that is not to be considered as a part of the budget. It is engrafting these appropriations for educational and charitable purposes on what is termed the budget. Now, that is the occasion of some confusion in the minds of some of us. It seems to me it ought to be clarified, either by the separation of the two subjects, as I suggested here during the forenoon discussion, or by embodying the appropriations for educational and charitable purposes in the budget. It seems to me that is the logical thing to do. I confess I am unable to see why this distinction should be drawn between the budget and the suggestion for the charitable and educational purposes. Why not embody it all under one subject, and deal with them as one subject? Now, with that in view, I offer the following as a substitute

for Mr. Pepper's proposition, and would ask that the Secretary read it. May I say that this offer is a substitute for both sections under discussion?

The CHAIRMAN. Sections 15 and 16?

Mr. FISHER. Yes, sir; sections 15 and 16.

The CHAIRMAN. It is so understood.

The Secretary read the proposed substitute as follows:

Section 15. On or before March 1 of each year in which the legislature shall be in regular session the Governor shall submit to the general assembly a budget. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the two fiscal years next ensuing, including expenditures for charitable and educational purposes. The Governor shall, at the time of presenting the budget to the general assembly, submit a bill containing the proposed appropriations for the fiscal years covered by said budget, as well as any bill or bills embodying any recommendations he may desire to make as to sources of revenue.

In submitting proposals for appropriations to charitable, benevolent or educational institutions not under the absolute control of the commonwealth, the Governor shall at the same time submit a plan of distribution among the classes of institutions to be benefited. No item of the general or other appropriation bill shall appropriate any definite sum of money to any such institution or designate any one or more of such institutions as beneficiaries; but all such items shall appropriate a gross sum to be distributed among a class or classes of such institutions (as such class or classes may be defined by general law) in accordance with a general plan set forth in the appropriation act or by general law or by an executive agency appointed by law.

Immediately upon receipt of the Governor's budget the presiding officer of the House of Representatives shall introduce in such House the said appropriation bill and also all bills relating to sources of revenue submitted by the Governor.

The general assembly shall have power to increase, decrease, strike out or otherwise alter any item in the appropriation bill, or add new items thereto. Until the appropriation bill shall have been finally acted upon by both Houses of the general assembly, neither House shall consider any appropriation measure, unless the same shall be solely for the immediate needs of the general assembly, or shall have been submitted to the general assembly by the Governor with the request that it be acted upon in advance of the appropriation bill.

The final adjournment of the general assembly shall not take place until a period of ten days shall have elapsed after the appropriation bill shall have been finally acted upon by both Houses of the general assembly and shall have been presented to the Governor.

Before final vote is taken on the general appropriation bill in either House of the general assembly, a separate vote shall be taken on each item making an appropriation for a class or classes of institutions not under the absolute control of the commonwealth, and such item shall be stricken from the bill unless it shall receive the support of two-thirds of the members elected to the House in which the vote is taken.

Mr. THORPE. Mr. Chairman: I second the substitute.

On the question,

Will the Committee agree to the substitute?

MR. ALTER IN THE CHAIR.

Mr. FISHER. Mr. Chairman: The object of this substitute is to remove the objection that has arisen by a division of subjects. This allows the whole matter to come within the scope of the budget, and there is no distinction in making appropriations between one class and another. So it becomes unnecessary, if this substitute prevails, to make any new section. The entire subject is unified in the budget. Now, the purpose, I take it, of Mr. Pepper's offer was to enable a standard of excellence to be set up, so that the distribution of money allotted for charitable and educational purposes might be distributed on a merit system. This gives the opportunity of setting up some such standard instead of making appropriations to individual hospitals or individual institutions. Appropriations will be made of so many million dollars for hospitals in a lump sum. The bill will not

indicate what hospitals are to be benefited, or the amounts that they are to receive, but leave that as an administrative subject to be dealt with in accordance with the thought of Mr. Pepper. That will not be dealt with arbitrarily if the law is properly administered, but a standard will be set up which will be a guide directing the amount of money that each institution will receive. In other words, the effort will be to award the institution a sum in proportion to the amount and the quality of the service rendered. That is the object of making this offer.

Mr. GORDON. Mr. Chairman: I want to subscribe very heartily to the general doctrine stated by you, sir, in your remarks upon this bill. The principle which you then stated was stated with your usual simplicity, clearness, reserve and corresponding force. Undoubtedly the best guardian of the liberties of the people is the legislative body. That is a doctrine that has shed its light upon the progress of democratic institutions from the time the Parliament of England became something more than a mere judicial body, down to today, when it is the most democratic institution probably among the great nations of the earth. It is true, as true today as it ever was, that the growth of executive power is a menace to liberty, and I do not know but that recent times have demonstrated in this government that that is still everlastingly true. I therefore wish again to right my theory according to the general principle you, sir, stated.

A word about the central idea of this report and of the criticism which has been made respecting some of the fundamental inconsistency in it. It is true, as Professor Thorpe said this morning, that the charities of the crown in England were administered by the crown, administered, as I had occasion to say a couple of weeks ago, usually by an officer called the lord high almoner, and the charity usually proceeded from the possessions of the crown, from the swollen grants made at various times under compulsion by successive legislatures, and the duty of distributing these bounties, coming from the crown alone, and other sources of revenue, and devolving upon succession to the crown, the distribution of these was gradually taken off the shoulders of the king and given to the officers; but all that took place when the crown was the origin of these gifts, and when, under a false governmental theory, he was supposed to be the father who distributed these benefits to the citizens, and the Parliament did nothing with respect to them. That was a time also when very often taxes were levied without the full consent of the people, and when their collection and distribution was largely a matter of caprice of the crown; but all that has passed, and any reason for leaving to the executive the determination of the distribution of the charitable or benevolent appropriations is gone. The Governor who comes into office comes in as fresh and penniless, unless he has been very fortunate, as he was when he was born. He has nothing to distribute and he can get nothing except in one way, and that is from the representatives of the people assembled in the Senate and House of Representatives. A representative body as chosen by the free vote of a free people from representative constituency throughout the whole state is the bright and consummate flower of modern democracy, and unquestionably anything which strikes at the fundamental power of that body to either levy taxes or spend the taxes of the people, unless it be in the interest of the people, and makes

for liberty, ought to be resisted; and also anything which gives to any particular executive officer the distribution of large sums of money at his discretion ought to be resisted. Every grant of unrestricted distribution of public money is a wrong, and also it is building up danger in the future in our institutions, building up the danger of executive coercion over the legislative body, which I believe is the greatest danger in a representative democracy. There is no danger equal I think to that; and there is another danger through the fundamental growth of the state or the growth of executive power to coerce the legislature, and that is the real, living danger; and to give a large purse to the executive to distribute as gifts is not wise unless you can urge some strong public reason for it. Of course, we have in this Constitution as it now exists, and in the Constitution recommended by this Commission, the exclusive right of taxation in the legislature, and I believe also, I am not sure of it, the restriction of bills for raising revenue arising in the lower house. I do not know whether there is a provision in the state Constitution or not, but there is no limit of how the bills for spending money shall arise, and the right of the legislature to spend the money is unquestionably absolute in the first instance; and unless the Constitution puts some restriction upon the power which inherently exists by virtue of the nature of the legislative body, there is no other agency for the expending of money.

But all constitutions, all modern constitutions, have put limitations upon the power of the legislature to spend money. They place various limitations. First, they started with prohibition, and in our Constitution as it now exists there is a prohibition against appropriations to certain kinds of institutions at all. That is an absolute stripping of the power to appropriate money for that purpose. And then there are other provisions which require that certain other appropriations shall have a two-thirds vote of the legislature. That is a limited or a partial restraint upon appropriations to institutions not under the exclusive control of the commonwealth; they can only have appropriations made by a two-thirds vote. Then there is another form of restriction in the Constitution, and that is a restriction upon a minimum appropriation. In another article in the Constitution there is this restriction: "The general assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this commonwealth of the age of six years may be educated, and shall appropriate at least one million dollars each year for that purpose." We have, therefore, in this Constitution a precedent; first, an absolute prohibition against certain kinds of appropriation, and next we have a limitation that certain appropriations shall have a two-thirds vote; and next we have a command to appropriate not less than a certain amount. Now, you cannot run through the gamut of legislative appropriation further than that; an absolute denial, a compulsion and a qualified denial. Hence there is nothing in this provision reported by the committee, in so far as it is reported, to limit appropriations and say that the legislature shall not appropriate more than a certain amount. And there is nothing in that that is extraordinary or unusual whatever. But what does this report of the committee do? It directs the Governor practically to recommend a piece of legislation appropriating money for

certain purposes. That is not much different from the general direction to the Governor that he shall from time to time give to the legislature an account of the condition of the commonwealth and make such recommendations as he shall see proper. Under that general power, such a bill as this report commands him to make, he could make, but if he did it under the existing Constitution, his bill could be thrown out entirely or changed in any way the legislature chose to do. But this requires him to make recommendations to the legislature of the bill which first fixes the maximum sum to be devoted to general purposes. Now, what is there wrong about that or unusual? I think nothing. I think there are many parallels for it and many precedents. This bill requires the Governor, therefore, to recommend a maximum sum. This is in the interest of economy; this is in the interest of defining to the legislature how much the state, because of its financial conditions, can afford to appropriate for that purpose, and the Constitution has put that limit upon the legislature. They cannot appropriate more than that for that purpose. I do not think anybody would say that that is any unusual invasion of the legislative power to appropriate money. The appropriation must come from the legislature, but it cannot exceed a certain sum. Next, the general purpose of that appropriation is stated in the bill, that is to say, it is for charitable purposes. That is not unusual. It is not unusual because all of the departments in the general appropriation bill receive their appropriations for the purposes of their specific departments, the appropriation to the department of agriculture, the department of forestry, or any department of the state government that receives its appropriation for its particular purpose, and it is limited to that purpose, and if not spent for that purpose will have to be covered back into the treasury. There is nothing unusual in requiring that this sum shall be devoted to charitable institutions, and so on. But next it requires the Governor to specify the plan upon which the distribution is to be made. That, I suppose, is not to be criticised. It is only stating to the legislature the reasons, nature and foundation for his recommendation. Next, he is to state the institutions that are to receive this gross sum and the amount. It is stated that the legislature may decrease those sums, but may not increase them, and that is the kernel of this matter. All the other things I think may very well be passed by as within the ordinary scope of limitation upon legislative power; but the legislature, if it should prevail, cannot increase the Governor's suggestion of the amount to be given to any institution, nor can it add any institution to his list. Ought that to be done?

While, Mr. Chairman, I express my whole view diffidently upon this subject, I have not given it much thought. I think there is one criticism on this one feature; I think the legislature ought to be limited to the gross amount of the bill, and should not be permitted to appropriate for that purpose more than the gross amount, but within that gross amount I think it should have discrimination and the power to decrease an appropriation for a particular institution, or leave it out altogether, or increase an appropriation to a designated institution, so long as the gross amount of the appropriation stays within the gross amount of the bill. Now, I can see perfectly the admirable purpose of this proposed amendment, and if it did not conflict with the idea so well stated by the gentleman from Allegheny,

Mr. Alter, I would approve it. If it did not deposit in the one man, the one executive, the Governor, this great power, I would approve of it. If it was given to a commission, I would approve of it. If it was lodged anywhere but in the executive of the commonwealth, I would say it was desirable legislation. If the Board of Charities should be recognized by the Constitution as the board which was to distribute the bounty of the commonwealth, I would say that it was in accordance with modern thought. But I do not believe it is in accordance with modern thought, and I do not believe that it is a safe or wise thing to make the executive the distributor in his discretion, a discretion, it is true, presumably persuaded or caused by recommendations of others, but not absolutely so, to give to him the discretion to expend eight millions of dollars for charities which are favored. I think, therefore, this clause might be very well amended by allowing the legislature a greater discrimination. No matter what may be said of the faults of the legislature; no matter how open it may be to criticism; no matter how black the records of legislatures and legislators have been, God knows that is one of the prices that democracy pays for its blessings; no matter what it has been, I would rather suffer the mistakes of the legislature along the line of favor than the mistakes of a single officer, an executive, along the same line. But, unfortunately, when Demos gets scared and rushes at once into the arms of her ancient enemy, and the parties of the past were so insistent in putting the strictest restraint on the executive power, if forgetting the lessons of the past, and her old enemy, I am afraid she is going to run away with his clothes and be the only defender of the fundamental principles of democracy. Still, I wish to raise my feeble voice as one still remaining true to the ancient faith. I should like to see the legislature given more power in the distribution of this fund than the pending resolution gives.

MR. SCHAFER IN THE CHAIR.

Mr. FISHER. Mr. Chairman: I think the offer embraces in a general way the idea suggested by Judge Gordon, excepting in this particular, that the standards to be set up are to be the work of the Governor or state agency rather than of legislative provision. It is based absolutely on the merit system. That is the purpose, if it accomplishes what is desired. I have no objections to a change such as Judge Gordon suggests of allowing that power to vest in some other function than the Governor, if it is thought wise; but I believe myself it is perfectly safe to leave the matter stand as it is.

Mr. GORDON. Mr. Chairman: I think that the great gain of this proposed resolution is fixing in the Governor's bill the ultimate amount that may be spent for charity. When that is done, I believe the legislature will exercise wise discrimination in regard to distributing it. At present there is no limitation upon the amount that they should spend for charity, and hence bills are passed, and passed, and passed, regardless of what they may aggregate, because the Governor will help in scaling them down. But if you place any restraint in respect to the ultimate amount, I think the distribution may be safely left with the legislature.

Mr. McCORMICK. Mr. Chairman: May I ask in regard to fixing a maximum amount, as to whether you do not also run into obstacles,

because the legislature can very properly say, "You base your maximum amount upon the revenue of the state, and propose to increase the revenue of the state by imposing certain taxes, and, therefore, there will be sufficient revenue if we pass our tax bill." Then why do you fix and limit the maximum amount on the ground that there is not sufficient revenue? I am asking this simply for information as to whether that does not also raise a difficulty and create a violation in the same way as in the other case.

Mr. FISHER. Mr. Chairman: I do not think so. That is a question of fact and not principle. The principle still stands. The legislature would be bound to keep its appropriations within the gross amount, and if it did not I should think the bill unconstitutional. The Governor can control the situation through the veto power. He can reduce or strike out items. Have I made myself clear?

Mr. PEPPER. Is not this also an answer to Mr. McCormick's suggestion; namely, that the gross amount specified by the Governor in his recommendation to the legislature is not a gross amount arbitrarily determined as the percentage or proportion of the fixed revenue which ought to be devoted to charitable use, but under the theory upon which we are now working it represents the result of a calculation of the cost of rendering the public service which the Governor is recommending to the legislature as a proper subject for recoupment or compensation? It does not seem to me that we ought to think of this as a case in which the Governor is to be liberal or illiberal according to the conditions of the state revenue. He ought to recommend a sum which would not be in excess of the cost of recoupment for expense for public service, and no matter how wealthy the state is, that ought not to be reflected in his recommendation, because he is not giving away as almoner the money of the people; he is settling a bill between the state and the institution which, upon the theory we are working upon, is acting as agent of the state for the purpose of rendering the service which the state might render directly. So it seems to me, on the theory that the Governor reaches his sum total not arbitrarily in fixing a percentage of the state income to be devoted to this purpose, but reaches his total by calculation and specifies a sum not in excess of the cost of the service which is to be rendered, upon that theory I suggest the proper aggregate sum should be specified by the Governor in his proposal to the legislature.

The CHAIRMAN. It is the further understanding of the Chair that the substitute proposed by Senator Fisher is a substitute not only for section 15, but for section 16 as well.

Mr. McCORMICK. Mr. Chairman: May I ask Senator Fisher whether, in this proposed amendment, this plan of distribution which is submitted by the Governor is subject to change by the legislature?

Mr. FISHER. Mr. Chairman: My thought is that it was, that the legislature was to be free to act upon this as on the other items in the budget.

Mr. McCORMICK. They can practically make any plan of distribution they desire?

Mr. FISHER. They can approximate a gross sum to a particular purpose, but cannot specify the individuals or individual institutions

that are to be benefited. That is a matter of distribution afterwards.

Mr. McCORMICK. But can make plans as to classes?

Mr. FISHER. That is the idea, and the appropriations to this class are subject to regulation by the legislature just the same as any other item in the budget. I had not thought that it was best to place the maximum limit on the appropriation which should be fixed by the Governor. That is one thought suggested here, but I do not see any reason why such items should not be left open the same as any other item in the budget.

Mr. CARSON. Where do you fix that gross maximum?

Mr. FISHER. I do not fix a maximum; I say, leave it open.

Mr. GORDON. The Governor fixes the maximum.

Mr. McCORMICK. Senator Fisher, may I ask if, in your opinion, this would require the class to be so created that any institutions now in existence, or any institutions that may be hereafter created, which conform to the specifications of that class would be entitled to their proportion of the lump sum of the appropriation?

Mr. FISHER. I think that is a matter for the legislature, but the distribution is, under the terms of the proposal, in accordance with the general plan set forth in the appropriation act, or by general law, or by an executive agency appointed by law. If it is by the legislature, it provides a method by law for not only existing but for any future class that might be thought worthy of the aid of the commonwealth.

Mr. McCORMICK. Mr. Chairman: There is one more question I would like to ask. I am sorry to take so much time, but this has just been suddenly presented to us. I would like to ask Judge Gordon, if I may, if he feels the danger to which we might be subjected in placing this responsibility upon the Governor would be entirely eliminated by placing it upon a commission, if that commission should be appointed by the Governor, or would that have to be safeguarded in some way? It seems to me you are jumping out of the frying-pan into the fire if the same power given to a group of men is imposed upon the Governor, because of the divided responsibility, and with one man you can place the responsibility for any act the people do not approve.

Mr. GORDON. I would not think so as to the power of distribution, and this is a question of distribution. If the power was left to a commission I do not think he would participate in the responsibility any more than he would in a commission, if the public utilities commission or the interstate commerce commission or any other of the great agencies of government—

Mr. McCORMICK. Mr. Chairman: It is only distribution?

Mr. GORDON. Mr. Chairman: Yes, sir.

Mr. FISHER. Mr. Chairman: This subject is all covered by legislative action. If an agency is created by law for the distribution of this fund, and it does not do its work efficiently, the legislature can revoke that by subsequent act, and so relieve the situation. This matter here, as you will note, is the distribution of the moneys to be made in the general plan. Now, that general plan may be set forth either in the appropriation act itself, or it may be done by a general law,

or it may be done by an executive agency appointed by law; but all these agencies are under the control of the legislature, so that there is no fixity, and if the administration is not proper, and the people do not approve of the method, they can act again through their legislature and make the correction.

Mr. McCORMICK. Mr. Chairman: Could the legislature say that it was not entirely satisfied with the existing system, and therefore its plan of distribution will be the present system? Does not the maximum lump sum prevent that?

Mr. FISHER. Mr. Chairman: The old system is wiped out.

Mr. McCORMICK. Mr. Chairman: They could not put in items?

Mr. FISHER. Mr. Chairman: That is not a distribution. It is only a method of individual appropriations.

Mr. PEPPER. Mr. Chairman: I have not had an opportunity to give adequate consideration to what appears to be a very careful and thoughtful suggestion that has been handed to me by a gentleman now in this room and not a member of the Commission, designed to meet, in the resolution that I propose, the difficulties that have been suggested on the floor. Perhaps, without encumbering or complicating the parliamentary situation by offering this as a resolution, I might have your indulgence and that of the Commission to read it aloud, and it may suggest some thought that will help us.

The CHAIRMAN. The gentleman has permission to read the communication.

Mr. PEPPER. (Reading.) "On or before March first of each year in which the legislature shall be in regular session the Governor shall submit to the general assembly a budget. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the two fiscal years next ensuing, excluding expenditures for charitable and educational purposes. The Governor shall at the time of presenting the budget to the general assembly submit a general appropriation bill containing the proposed appropriations for the fiscal years covered by said budget, as well as any bill or bills embodying any recommendations he may desire to make as to sources of revenue. Immediately upon receipt of the Governor's budget the presiding officer of the House of Representatives shall introduce in such House the said general appropriation bill and also all bills relating to sources of revenue submitted by the Governor.

"Until such appropriation bill shall have been finally acted upon by both Houses of the general assembly neither House shall consider any other appropriation measure unless the same shall be for the immediate needs of the general assembly or shall have been submitted to the general assembly by the Governor with the request that it be acted upon in advance of the general appropriation bill.

"The final adjournment of the general assembly shall not take place until a period of ten days shall have elapsed after the general appropriation bill shall have been finally acted upon by both Houses of the general assembly and shall have been presented to the Governor."

I take it, Mr. Chairman, if I catch the drift of the proposal down to this point, that it is substantially in accord with the resolution I had the honor to offer, excepting that it omits in the earlier part of the section any reference to the proposal for charitable appropria-

tions, which is to be made separate from the proposal for the general appropriation. Then follows this, which I take it is the distinctive paragraph of the draft that I am reading.

"The Governor shall also at the time of presenting the budget to the general assembly submit a proposal for such appropriations for charitable, benevolent and educational purposes as he shall think proper and shall submit a special appropriation bill to carry such proposal into effect. In submitting such proposal he shall indicate the basis upon which the cost of approved work or service to be done or rendered by designated corporations or associations is to be computed, and shall recommend an aggregate sum to be appropriated and distributed among such corporations or associations upon such basis.

"The general assembly shall have power to increase, decrease, strike out or otherwise alter any item in any of the general, special or other appropriation bills comprehended in this section or may add new items thereto. Until the special appropriation bill shall have been finally acted upon by both Houses of the general assembly neither House shall consider any appropriation measure except the general appropriation bill or such as shall be solely for the needs of the general assembly or which shall have been submitted to the general assembly with the request that it be acted upon in advance of such special appropriation bill."

In other words, as will be seen, this proposal is to retain the structure of the resolution for which Senator Fisher's proposal is substituted, and which amends the structure of that proposal by giving to the general assembly the right to increase the specific items and to add items not included, and it also makes it incumbent upon the Governor to indicate the basis upon which the cost of approved work or service done by the designated corporations or associations is to be computed.

Mr. GORDON. Mr. Chairman: That makes the bill purely only a recommendation?

Mr. PEPPER. Mr. Chairman: Only a recommendation, sir.

Mr. CARSON. Mr. Chairman: Do I understand that Mr. Pepper has introduced this as a modification of Mr. Fisher's proposition? We have been supplied with some typewriting, and I do not know whether this is your proposition or not, Senator. I notice to a certain extent it follows the exact language.

Mr. PEPPER. Mr. Chairman: I understand the situation to be this. First, there is the resolution which I offered, and second, there is the substitute offered by Senator Fisher, which I understand to be the typewritten document Mr. Carson refers to; and then the document which I have just read, which was, as I said, handed to me by a gentleman not a member of the Commission, and was extremely welcome, and I have not ventured to introduce it as a resolution, but to read it as if in the debate on the pending question. It indicates what might be done in the way of further amendment either of Senator Fisher's proposal or of mine.

MOTION TO RE-REFER SECTIONS 15 AND 16 OF ARTICLE III.

Mr. FISHER. Mr. Chairman: It seems to me the discussion has reached the point where we are pretty nearly all of one mind. I would, therefore, move that the Committee of the Whole recommends these

sections, fifteen and sixteen, be returned to Committee No. 1 in order that they may be redrafted.

The CHAIRMAN. It seems to the Chair that this ought to be subject to some modification as to time when the redraft will be submitted to the Committee of the Whole.

Mr. FISHER. Mr. Chairman: I would suggest that, if the Commission continues in session tomorrow, it could be reported out again before the Commission rises for the week.

Mr. CARSON. Mr. Chairman: That is a very good thought. It is almost impossible to carry in our minds the exact language of the changes which Mr. Pepper has introduced for his friend. There is certainly a common thought there working towards harmony, and probably we would reach a more definite and satisfactory result if the committee will take back the various drafts and give us the result in the morning.

The CHAIRMAN. The motion is that the draft of Senator Fisher's substitute, the draft read by Mr. Pepper, together with the pending resolution, shall be referred back to Committee No. 1 to make further report tomorrow morning.

Mr. CARSON. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IX, SECTION 4.

The CHAIRMAN. The next section in order for consideration is section 4 of article IX of the Constitution, the report of Committee No. 4 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 4. Except with the approval of three-fourths of all the members elected to each House, no debt shall be created by or on behalf of the state for any purpose other than to supply casual deficiencies of revenue not exceeding one million dollars, repel invasion, suppress insurrection, defend the state in war, improve and rebuild the highways of the commonwealth, acquire land within the commonwealth for forest purposes, or pay existing debts.

On the question,

Will the Committee adopt the report?

Mr. FISHER. Mr. Chairman: I offer the following substitute, which I would ask the Secretary to read:

The Secretary read the substitute as follows:

No debt shall be created by or on behalf of the state except to supply casual deficiencies of revenue not exceeding one million dollars, repel invasion, suppress insurrection, defend the state in war, or, with the approval of two-thirds of all the members elected to each House, improve and rebuild the highways of the commonwealth and acquire land within the commonwealth for forest purposes: provided, however, that no such indebtedness for highways shall be incurred in excess of one hundred and fifty million dollars, or for forest purposes in excess of twenty-five million dollars, and then only with the consent of the electors of the state voting thereon at a public election in the manner provided by law.

On the question,

Will the Committee adopt the substitute?

LIMITATION OF STATE DEBT.

Mr. CARSON. Mr. Chairman: Might I ask Senator Fisher how he fixes the pecuniary limit of one hundred and fifty million dollars

for highways, and twenty-five million dollars for the purchasing of forestry lands? These figures, of course, seem large at the present time, but this Constitution, if adopted, may not be changed for fifty years to come, in which case an acquisition of forest lands of twenty-five million dollars would be a very small sum, indeed, exceedingly small. Why fix that pecuniary limit, and what is the definite purpose?

Mr. FISHER. Mr. Chairman: These figures are somewhat arbitrary. In the discussion which developed, from Mr. Pinchot's remarks, and I take it, he is the authority of the Commission on forestration, he thought that twenty-five million dollars would be needed to acquire forest lands, and I took that suggestion. Of course, we must keep in mind that we will have revenues that will be devoted to this purpose as well as to roads from time to time, and this is a provision covering only indebtedness. We have, as I understand it, about a million acres of public land, owned or controlled by the Department of Forestry, which have cost the state about two and one-half million dollars. It is hardly possible that the residue of these denuded lands can be acquired as cheaply as that.

Mr. CARSON. Mr. Chairman: He said about five dollars an acre. I asked him the question.

Mr. FISHER. Mr. Chairman: That was the basis. There are about five million acres, roughly speaking, that ought to be acquired. That would make about twenty-five million dollars.

Mr. CARSON. Mr. Chairman: Yes.

Mr. FISHER. Mr. Chairman: The revenues could be used to a certain extent, and if we are as fortunate with the lands as we have been with the land already acquired they will go far to support themselves. The Forestry Department has been more than paying its own running expenses. I have had some little dealings with the Forestry Department, and I have found them proceeding along very businesslike lines, and adopting business methods. I had occasion to purchase some stone on forestry land, and to get some rights of way through forest land, and I know they exacted the last cent for what they had given up. I am not entering any defense of the Forestry Department, but my experience has been that they are administering the department in a businesslike way. As these other lands are acquired, no doubt sources of revenue may be found. Ganister rock has been found on areas of the state land. That is becoming a valuable mineral. Some of the areas have produced small quantities of coal. Timber is always growing into value. All this is to be weighed when we consider the limit of indebtedness that ought to be permitted to the Forestry Department. It is altogether possible. I may be mistaken as to the amount. It is purely arbitrary, and I am ready to listen to the suggestion of any member of the Commission who may have more information on this than I have.

For highway purposes we have today a fifty million dollar indebtedness authorized. Of that amount I think some twelve million dollars has been issued, leaving quite a large sum of the authorized indebtedness yet to be applied for the purpose of good-road construction and maintenance. This road problem is a very large question, because our system embraces some ten thousand miles. The primary system as now laid out by the present administration includes some-

thing like thirty-five hundred or four thousand miles. That will be a great transportation system, and it is going to take a great deal of money to construct it, and it will be quite a burden to maintain it after it has been put physically in place. Now, we have large revenues for the purposes of highways, and we are getting aid from the Federal government, because the Federal government is beginning to see that it is a national question that we should have an adequate highway system; hence they are contributing. Then we have the revenues derived from the licensing of motor vehicles. They have multiplied so rapidly that the revenue from that source has become very large. Then we have the general appropriation that the legislature may devote to this purpose from time to time, so that I speak in a broad way. I think we have the liquid funds available for doing a great deal of this work. Nobody can forecast or foresee just how much indebtedness should be incurred to carry out the work which the commonwealth has in view, but it seems to me that with all these possible sources of income that if the state were given constitutional authority to raise one hundred million dollars more than that already authorized it would meet the situation for many years to come. When we get up against the limitation, if there is need for more money in the development of the highways, and it is altogether possible that it might be, for these sums which seemed so large yesterday may seem very small tomorrow—resort then can be had to an amendment to the Constitution just as in the present creation of the fifty million dollar bond issue for road purposes. Now, these are purely arbitrary figures, and I am willing to listen to any suggestion anybody may have if it is thought wise to change them.

Mr. McCORMICK. Mr. Chairman: I fully approve of the spirit of the amendment that has been offered, but I wonder if in giving this power we should not throw around it other safeguards in limiting the number of years of the debt to possibly thirty, and also specifying sinking fund payment large enough to wipe out the indebtedness during those thirty years. I think the sums are reasonable, provided the issue of bonds is properly protected. I wonder if that would not inspire the confidence of the voters of the state in adopting a system of this sort, and it would be a perfectly businesslike transaction.

Mr. FISHER. Mr. Chairman: I think that suggestion entirely appropriate, and should be covered in the section of the Constitution which relates to that particular subject, and I have no doubt is or will be when we get the complete draft.

Mr. ALTER. Mr. Chairman: May I ask the Senator what was the purpose in omitting the provision under which debts can be created for the purpose of paying existing debts, or whether that omission was an inadvertence?

Mr. FISHER. Mr. Chairman: That is an inadvertence if it is omitted.

Mr. ALTER. Mr. Chairman: Then will the gentleman accept the insertion after the word "war" in the fourth line of the typewritten section, the words "pay existing debts," so that it will read "No debt shall be created by or on behalf of the state except to supply casual deficiencies of revenue not exceeding one million dollars, repel in-

vasion, suppress insurrection, defend the state in war, pay existing debts," and so forth.

Mr. FISHER. Mr. Chairman: I accept the amendment; that is the intention, and in acting on it let it be understood that these words are inserted.

Mr. PEPPER. Mr. Chairman: On behalf of the committee which reported out the resolution in its original form, permit me to say that the change in section 4 of article IX as it stands at present was made because in the latter part of the proposed substitute the limitation upon the borrowing power was removed, and therefore the only limitation that was put, namely, one million dollars in the case of loans to meet casual deficiencies of revenue, was moved up into the earlier part of the section. If we are going to retain the limitations upon the amount which can be borrowed for specific purposes, would it not be better to gather all limitations into a single section, and keep the form of section 4 as it stands in the Constitution now? I would suggest to Senator Fisher that that will have the advantage of following our principle and conforming as nearly as possible to existing provisions when we are drafting amendments. The section would then read thus: "No debt shall be created by or on behalf of the state, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the state in war, improve and rebuild the highways of the commonwealth, acquire land within the commonwealth for forest purposes, and to pay existing debts; and the debt so created shall never exceed in the aggregate at any one time one million dollars in the case of casual deficiencies of revenue, or one hundred and fifty million dollars in the case of highways, or twenty-five million dollars in the case of forest lands." That seems to conform more nearly to the language of the Constitution and any infelicities in style can easily be taken care of at the proper time.

Mr. FISHER. Mr. Chairman: I accept the suggestion.

Mr. McCORMICK. Mr. Chairman: I would like to ask Senator Fisher if I understood this thing correctly. I assume that this additional one hundred million and twenty-five million indebtedness could not be created without submitting it to the vote of the people; no additional debt can be created unless it is submitted as we do under the present Constitution.

Mr. FISHER. Yes, sir.

Mr. GORDON. Mr. Chairman: That is not what the article says; quite the contrary. Under this article one hundred and fifty million dollars for roads and twenty-five million dollars for forestry can be created without any vote of the people.

Mr. FISHER. Mr. Chairman: It reads, "That no such indebtedness for highways shall be incurred in excess of one hundred and fifty million dollars, or for forest purposes in excess of twenty-five million dollars, and then only with the consent of the electors of the state voting thereon at a public election in the manner provided by law."

Mr. GORDON. Mr. Chairman: "That no indebtedness for highways shall be incurred in excess of one hundred and fifty million dollars, or for forest purposes in excess of twenty-five million dol-

lars." It so reads. I submit it to any grammarian on the floor of the Commission. It may not be intended, but that is what it says.

Mr. ALTER. Mr. Chairman: The prohibition against debt in excess of one hundred and fifty million dollars and twenty-five million dollars for forests is absolute, and a debt to that extent only can be created. You cannot go over one hundred and fifty million dollars at all and then only with the consent of the people. In other words, you must keep within one hundred and fifty million dollars and then only with the consent—

Mr. McCORMICK. You mean the legislature can create a debt of one hundred and fifty million dollars more?

Mr. ALTER. No.

Mr. GORDON. Mr. Chairman: The gentleman from Allegheny is wrong. Or let me ask him to read it over again. "Provided, however, that no such indebtedness for highways shall be incurred in excess of one hundred and fifty million dollars, or for forest purposes in excess of twenty-five million dollars, and then only with the consent of the electors of the state voting thereon at a public election in the manner provided by law." I say that that only requires the vote of the people if the debt is increased above one hundred and fifty million dollars or above twenty-five million dollars.

Mr. ALTER. Mr. Chairman: I am still compelled to agree with the gentleman from Indiana.

Mr. GORDON. Mr. Chairman: It ought to be indubitable.

Mr. FISHER. Mr. Chairman: I think if we follow the language in the original provision or section as suggested by Mr. Pepper we can eliminate any misunderstanding as to the meaning of it.

Mr. PEPPER. Mr. Chairman: But my suggestion failed to take adequately into account this limitation that the vote in each case must be a vote by two-thirds of the members elected to each House. I think my suggestion ought to be modified so as to include that provision. It is strange, Mr. Chairman, that our minds should differ so in regard to the meaning of this proviso; but I cannot see it otherwise than as Judge Gordon sees it. Is it not true, sir, that even if, as Mr. Alter has pointed out, there is an absolute limitation upon the amount that is to be permitted to be borrowed for these two purposes, at any rate, there is the superfluous provision as to how you should make an impossible increase? The language is, "provided, however, that no such indebtedness for highways shall be incurred in excess of one hundred and fifty million dollars, or for forest purposes in excess of twenty-five million dollars, and then only with the consent of the electors of the state voting thereon at a public election in the manner provided by law." Now, if it is true that you cannot increase beyond one hundred and fifty million dollars, why put in the safeguard that the impossible increase shall only be by referendum?

Mr. GORDON. Mr. Chairman: That is a perfect solution.

Mr. PEPPER. I should think so.

Mr. FOX. As I understood your suggestion, Mr. Pepper, a few moments ago as to the substituted clause offered by Senator Fisher, it was that he did not include the provision that we are now discussing, then only with the consent of the state voting through an

election in the manner provided by law, and I suppose that was merely an inadvertance. It seems to me that that should go in in some form, and I suggest the difficulty we have in hand is as to grammar and that could easily be changed by this language; "and such indebtedness shall only be created with the consent of the electors of the state voting thereon at a public election in the manner provided by law."

The CHAIRMAN. Is the suggestion of Judge Fox accepted by Senator Fisher?

Mr. FISHER. Mr. Chairman: Yes, sir.

The CHAIRMAN. Then the grammatical difficulty is out of the weather.

On the question recurring,

Will the Committee adopt the substitute as amended?

It was adopted.

ARTICLE XVII, SECTION 4.

The CHAIRMAN. The next section in order is resuming the consideration of section 4 of article XVII of the Constitution, the report of Committee No. 4 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 4. Subject to such regulations as shall be prescribed by general law or by such agency as may be constituted from time to time by the general assembly, corporations for public service may consolidate with, or purchase the property of, or may through stock ownership or otherwise acquire and exercise the control of, other corporations formed for the same or a kindred purpose.

On the question recurring,

Will the Committee adopt the report?

• CONSOLIDATION OF CORPORATIONS.

Mr. PEPPER. Mr. Chairman: It is suggested from the floor that as chairman of the committee I ought perhaps to repeat the statement that was made when the question came originally before the Commission in the Committee of the Whole. The reason that prompted the committee to make this proposal is that, in the judgment of the committee, the safeguard that should surround the public interest in these matters of inter-corporate consolidation can be provided for much more effectually by removing the prohibition on consolidation and definitely suggesting it to the jurisdiction of the Public Service Commission or such other agency as may from time to time exist for the purpose of formulating these conditions under which consolidation may take place. In the debate which took place last week it was suggested or intimated that the proposal of the committee was unsafe from the point of view of the public interest, for the reason that the consolidation, if permitted upon specific terms, might thereafter be found to have been permitted on terms too favorable to the consolidating companies and not favorable enough to the interests of the public. But the committee has been of the opinion, sir, that all those provisions which are by the Public Service Commission made the conditions of consolidation are necessarily fluid and subject to revision, that there can be no such thing as a contractual relation-

ship between the state and the consolidating companies which will exempt the consolidated concern from a modification thereafter in the public interest of the terms upon which consolidation was effected. In other words, that if the provision is adopted as recommended by the committee, it will become possible for consolidations to take place only when a certificate of public convenience is obtainable, and then only upon such terms as the Public Service Commission may prescribe, and that those terms when made are subsequently necessarily subject to revision in the interest of the public, and in no sense protect the consolidating concerns from the future exercise of the state supervisory power. We have considered that very carefully and have come to the conclusion that nothing now proposed is inimical to the public interest. On the other hand, we have been impressed with the importance of emphasizing the unwisdom of insisting upon corporate competition in all cases where the situation may be such that the public is obviously better served by combination or consolidation. There is one doubt that has been raised in my mind since the report was formulated. I have not been able to consult the other members of the committee, but it is with respect to the limitations contained in the clause "for the same or a kindred purpose." There are a good many cases in which consolidation might be proper between corporations falling outside the limit of that description. There might be cases, for example, in which an electric street railway company could with advantage consolidate with an electric light, heat and power concern with a view of acquiring a plant for the furnishing of its own electricity. If the public was adequately protected by suitable safeguards that consolidation might be a perfectly proper thing, and the question would arise as to whether those two concerns come within the term "kindred purpose." I think possibly it would be consistent with the general theory of the proposal if we should omit any limitation upon the character of the corporations that might thus combine, and leave that to be determined by the public welfare as respects the particular proposal that was placed before the Public Service Commission. I have no authority to speak for the committee on that point, and merely throw it out as a suggestion. If it should appeal to the Commission as an advisable change it would be easy enough to have somebody suggest it by way of an amendment.

Mr. GORDON. Mr. Chairman: That we have departed from public policy may be apparent to the committee, I would like to read the section which it substitutes, section 4.

"No railroad, canal or other corporation, or the lessees, purchasers or managers of any railroad or canal corporation, shall consolidate the stock, property or franchises of such corporation with, or lease, or purchase the works or franchises of, or in any way control any other railroad or canal corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad or canal corporation act as an officer of any other railroad or canal corporation owning or having the control of a parallel competing line; and the question whether railroads or canals are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues."

I say this is a complete reversal of that policy, and I have been converted by the persuasive chairman of the committee reporting it,

so that I intend to support it; and yet I feel after I have been subjected to his arguments a persuasion that I should read again the subject-matter to which I have given assent.

"Section 4. Subject to such regulations as shall be prescribed by general law or by such agency as may be constituted from time to time by the general assembly, corporations for public service may consolidate with or purchase the property of or may through stock ownership or otherwise acquire and exercise the control of other corporations formed for the same or a kindred purpose."

There is nothing more in that provision than that you simply repeal the existing provision of the Constitution. By that I mean to say that the only prohibition against the coalition of competing lines is the Constitution, and if you repeal the existing provision, the right to have competing corporations coalesce and act as one corporation would not be subject to any provision of law that I know of. But, as I say, that is a complete change of purpose, and it is in this case inviting such a thing, and I believe that the day has arrived when that may be done with safety, and for this reason.

When the Constitution as it is written now was adopted, corporations everywhere were practically predatory. By that I mean, they charged all the tariff they dared and were subject to no regulation, and competitors when they became dangerous were bought out, and the last condition was worse than the first, and the commonwealth would have to support the added burden of capitalization of the corporation. When the present Constitution was adopted that was the real evil, and the Constitution, therefore, prohibited, in the language I have read, but prohibited only as to railroad and canal corporations, and curiously, gave only to the complainant the right of trial by jury, and did not give to the corporation the right to demand a trial by jury. The report of the committee permits any corporation performing a public service to unite with any other corporation performing a like or kindred service or to own the stock of any corporation. It is that last part of it that I cannot see the significance or benefit of. I do not know that that would induce me to object to these provisions, but I call it to the attention of the chairman of the committee. I do not know why stock ownership in any other corporation should be permitted, because I cannot see how it would in any case serve any public good. I mean with respect to the service rendered by the corporation. I favor this provision because I think the day has at last arrived that the corporations performing public service are entirely under the control of the commonwealth. They can do nothing with respect to coalition or by stock ownership of other corporations, or increasing their stock or indebtedness, can do nothing without the permission of the Public Service Commission. Also I am inclined to think that the coalition of corporations, when done wisely under the direction of a body having in mind the public good, may result in better and cheaper service by diminishing the cost of dual plants and the maintenance of dual corporations, and for other various and obvious reasons also. I am inclined to believe that when corporations are thus coalesced into a smaller number they are more easily governed by the public authorities and that the purposes may be subject to public regulation and control better when under one management, financial and corporate, than under many looking to the same end. I shall therefore support the report of this committee.

Mr. PEPPER. Mr. Chairman: I may say that the reason the committee introduced the provision as to stock ownership was because we had in mind the section in article XVI, I think it is the sixth section, which forbids corporations to engage in any other business than the one specified in their charter, and it occurred to us that there might be cases in which a virtual consolidation was proper but where difficulty would arise if the corporations were formed for different purposes, but within the limit of the word "kindred" as stated in the paragraph, thus making impossible a consolidation, but virtually a consolidation might be effected through stock ownership. It was in order to give elasticity to the doctrine that every corporation should be formed for but one purpose.

The CHAIRMAN. When you come to consolidating corporations that have outstanding long-term mortgages, there are conditions arising sometimes in which it is most essential that you should keep alive the corporate entity of the mortgagor controlled through a stock ownership by the larger corporation in which it is to be merged.

Mr. FOX. Mr. Chairman: May I inquire of the distinguished chairman of the committee whether there would be any objection to changing the language in this way: "corporations for public service may consolidate with or purchase or lease the property," and so on?

Mr. PEPPER. Mr. Chairman: I think not, sir. The thought of the committee was that the case of leasing was sufficiently covered by the language "or may through stock ownership or otherwise acquire and exercise control of other corporations formed for the same or a kindred purpose," because it was in our mind that in some instances the form of control would be through an operating contract and not a lease or any other specific form of relationship, and if we mention the lease specifically, it might be thought to exclude contracts. I should like to defer, Mr. Chairman, to Judge Fox's view upon the sufficiency of the language, as it stands. After speaking of the purchase of property "or may through stock ownership or otherwise acquire and exercise the control of other corporations formed for the same or a kindred purpose," my thought is that covers, *inter alia*, the case of a lease. If it does not, I quite agree that the section ought to be amended as Judge Fox proposes.

Mr. FOX. Mr. Chairman: I think it would be wise to insert the word "lease."

Mr. PEPPER. Mr. Chairman: I accept the amendment.

On the question,

Will the Committee adopt the report as amended?

Mr. THORPE. Mr. Chairman: May I ask the chairman of the committee a question? Of course, there is a reason for everything, and our constitutions are running into such extraordinary lengths all over the Union. Is there not tautology in the first four lines, "Subject to such regulation as shall be prescribed by general law or by such agency as may be constituted from time to time?" I rise simply to inquire whether one statement or the other might not suffice for both.

Mr. PEPPER. Mr. Chairman: I am not sure I can give a satisfactory answer. The thought suggested by Judge Gordon, that the section added nothing to the law as it stands if we simply repeal the prohibition on consolidation, is perhaps answered by pointing out

that if we merely repeal the prohibition on consolidation, then the consolidated company would indeed be subject to regulation by the Public Service Commission; we should not have the jurisdiction so carefully defined as a jurisdiction to prescribe the terms upon which the original consolidation might take place, if at all.

Mr. GORDON. Mr. Chairman: That is correct.

Mr. PEPPER. Mr. Chairman: Now, with regard to the other point, we have been so far pursuing the policy of avoiding the giving of a constitutional status to the Public Service Commission, on the theory that we may not have reached the high-water mark of what is possible in the way of wise regulation of public service companies. It had occurred to us, therefore, that if we limited our statement of supervisory powers to such agencies as may be constituted from time to time by the general assembly, we might be forcing the general assembly into creating such an agency, whereas the purpose is to leave the general assembly free to prescribe the standards or conditions of consolidation without reference to any such agency. It was to provide for the double contingency that we put that language in, and I think Dr. Thorpe will submit to the thought of the committee that it is better to leave it in that way, unless we are prepared to accord a constitutional status to the Public Service Commission at once, in which case I quite agree that reference to the general law might be omitted.

On the question recurring,

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE XVII, SECTION 6.

The CHAIRMAN. The next section in order for consideration is section 6 of article XVII of the Constitution, the report of Committee No. 4 being that this section shall be stricken out, and the subsequent sections renumbered accordingly.

The Secretary read the section as follows:

Section 6. No president, director, officer, agent or employe of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or worked by such company.

On the question,

Will the Committee adopt the report?

CORPORATION OFFICERS.

Mr. PEPPER. Mr. Chairman: May I remind the Committee that the question was this? The title of article XVII having been changed from "Railroads and Canals" to "Corporations for Public Service," it becomes necessary to take account of the fact that in section 6 the persons specified are the officers of railroad and canal companies only, and it seemed to the committee that if the section was to remain at all, it ought to be amended in such a way as to include corporations other than railroads and canals, and when we came to attempt an amendment by enlarging its operation, we hesitated to stop with a declaration that was limited to corporations formed for the

public service, because it seemed to us that the principle here enunciated, the principle of general law, ought to be applicable to officers of private corporations. Then it occurred to us, since it was so clearly a question of general corporation law, a matter suitable for the attention of the legislature, that there is no real occasion for constitutional declaration on the subject at all. That has led us to recommend that the section be omitted.

Mr. GORDON. Mr. Chairman: I would like to ask the chairman of the committee if this clause should be stricken out whether there would be anything in the law of the state of Pennsylvania that would prohibit a railroad from holding stock in a mining company?

Mr. PEPPER. Mr. Chairman: I answer the question by saying that this section, as I read it, has nothing to do with the exercise of corporate power by corporations, but has to do only with the interest of officers of corporations in the business in which their corporations are engaged, or the interest of officials in contracts with other corporations. The language is: "No president, director, officer, agent or employe of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or worked by such company." As I interpret the section, it has no relation to the question raised by Judge Gordon.

Mr. GORDON. Mr. Chairman: That is true.

Mr. PEPPER. Mr. Chairman: It has to do with the right of one corporation to be interested in the commodities which it carries or otherwise handles. That question, so far as the Interstate Commerce Commission is concerned, is covered adequately by the commodities clause.

Mr. GORDON. Mr. Chairman: I confine myself to the question of the state, but even as to that your answer satisfies me.

On the question recurring,

Will the Committee adopt the report.

It was adopted.

NEW ARTICLE, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 1. The municipalities of this commonwealth are counties, townships, cities, boroughs, school districts and such other incorporated districts as the general assembly shall by law create.

On the question,

Will the Committee adopt the report?

It was adopted.

NEW ARTICLE, SECTION 2.

The CHAIRMAN. The next section in order for consideration is section 2 of the proposed new article of the Constitution, the report

of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 2. The general assembly may provide for the creation, division and change of boundaries of any class of municipalities.

On the question,

Will the Committee adopt the report?

MUNICIPAL BOUNDARIES.

Mr. CARSON. Mr. Chairman: May I ask the chairman of the committee exactly what the scope is of these words? Does that create a power so as to extend the bounds of the city of Philadelphia into Delaware county and annex Chester, to Bucks by taking Bristol, and to Chester by taking Downingtown?

Mr. PEPPER. Mr. Chairman: In the absence of the chairman of the committee, Mr. English, who is specially qualified to answer questions, I may find myself at a little disadvantage as we proceed; but if the gentleman will look at the sections immediately following this one; namely, section 3 and section 4, he will perceive that while the section now under discussion does confer upon the legislature the power to change boundaries of various kinds of municipalities, and might exercise that power in the way that he has just indicated, the limitations upon the exercise of the power are those limitations which come from the popular consent of the persons affected, at elections held for the purpose. The section under consideration, as it will appear, is the second. "The general assembly may provide for the creation, division and change of boundaries of any class of municipalities."

Mr. CARSON. Mr. Chairman: That, of course, would include cities of the first class?

Mr. PEPPER. Mr. Chairman: Yes, sir. It is provided in section 3: "No new counties shall be established which shall reduce any county to less than four hundred square miles or to less than twenty thousand inhabitants, nor shall any county be formed of less area or containing a less population, nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided." Section 4 deals with the case of cities and boroughs.

Mr. CARSON. Mr. Chairman: Then section 4 is section 3 of the existing article?

Mr. PEPPER. Mr. Chairman: Section 3 is intended to be a re-enactment of section 1 of article XIII as it stands at present. Section 4 is a new section, Mr. Chairman. I am reading these later sections merely because they throw light upon the section immediately under discussion. Section 4 reads thus: "No city or borough shall be created, nor shall the boundaries thereof be changed, except by the consent of at least a majority of such electors resident within the proposed boundaries as shall vote on the proposed change at an election which shall be held as may be provided by law; nor shall any change in boundary be made which shall place outside the existing limits of a city or borough any part thereof without the consent of at least a majority of such electors resident within the proposed excluded area as shall vote." The distinction made with respect to the popular

assent is between scattered populations outside the limits of cities and boroughs and within the limits of counties and townships whose consent is not asked to a proposal to divide the county and those more compact communities in which the popular consent before the limit of the community can be changed. In the case of the political subdivision, where consent is not asked, the limitations are those which are expressed in section 3; namely, that the area in the county shall not be reduced below a specified limit, and the number of inhabitants shall not be reduced below a certain limit and lines shall not be drawn within a certain number of miles of the existing county seat.

Mr. CARSON. Mr. Chairman: I might say, though I do not have the letter here, that Mr. Alba Johnson, who is a citizen of much public spirit and great public experience, while he was president of the Baldwin Locomotive Works became much interested in the growth of those new works, which were established either within or close to the present city of Chester. The improvements that were undertaken and the rapidity with which the population increased suggested to him that there ought to be power given so that expansion of a zone could be not impeded and that if a great force was transmitted to a given community and it found itself growing in the direction of municipal improvements, such as streets, better paved and better lighted streets, or better parks and lighting facilities, and so on, it ought not to be checked rudely by suddenly finding a lack of power to expand by some narrow objection entrenched behind a habit or possibly an unenlightened view of public interest. Now, the subject is entirely new to me, but Mr. Johnson did express the hope that this Commission would so far confer on cities—he was not thinking alone of cities of the first class—I do not know, is Chester reckoned a city?

The CHAIRMAN. It is a third class city, but it is intended to incorporate Philadelphia within its limits.

Mr. CARSON. Mr. Chairman: Very good, sir; but if you wish to take it the other way, the invitation is out. However, if you want to play the host, you will pay the bill as hosts generally do.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

NEW ARTICLE, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 3. No new county shall be established which shall reduce any county to less than four hundred square miles, or to less than twenty thousand inhabitants, nor shall any county be formed of less area or containing a less population, nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided.

On the question,

Will the Committee adopt the report?

It was adopted.

NEW ARTICLE, SECTION 4.

The CHAIRMAN. The next section in order for consideration is section 4 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 4. No city or borough shall be created, nor shall the boundaries thereof be changed except by the consent of at least a majority of such electors resident within the proposed boundaries as shall vote on the proposed change at an election which shall be held as may be provided by law; nor shall any change in boundaries be made which shall place outside the existing limits of a city or borough any part thereof without the consent of, at least a majority of such electors resident within the proposed excluded area as shall vote.

On the question,

Will the Committee adopt the report?

CITIES AND BOROUGHES.

Mr. FISHER. Mr. Chairman: May I ask a question? This section provides: "No city or borough shall be created, nor shall the boundaries thereof be changed except by the consent of at least a majority of such electors resident within the proposed boundaries." But I would like to know what is meant by "proposed boundaries."

Mr. CARSON. Mr. Chairman: Enlarged boundaries, does it not mean?

Mr. PEPPER. Mr. Chairman: That was the thought of the draftsman of the section, that the distinction is between existing boundaries and proposed boundaries as they shall exist if the proposition carries.

Mr. FISHER. Mr. Chairman: If there is to be an addition of territory to the city of Philadelphia, the vote will be taken in both municipalities and the majority of both will prevail.

Mr. PEPPER. Mr. Chairman: That would be the consequence of this language as written.

Mr. FISHER. Mr. Chairman: I am afraid the small municipality would not have much of a show if that is the intention or meaning of the provision.

Mr. PEPPER. Mr. Chairman: I think that is true, and perhaps the committee was in fault in not considering the possibility that the merger might be objectionable to the smaller group. We had in mind the thought that in all these cases the merger is suggested by the smaller municipality, and the consent of the large municipality is the doubtful thing, but if there is danger that a small group might be swallowed up against its will, I think the language ought to be changed, provided that a majority in each of the old political subdivisions should decide if there seemed to be any real danger to the group.

The CHAIRMAN. That is a very dangerous proposition in making consolidations that sometimes really ought to be made, and little municipalities can defeat the whole thing.

Mr. PEPPER. Mr. Chairman: That was our thought, sir, that the real interest in the matter is the interest of the population of the two political subdivisions considered as a whole.

Mr. CARSON. Mr. Chairman: I think you have pointed it out very clearly. If Senator Fisher's suggestion should prevail, why, the

objection of a very little village may stand in the way of a very great public improvement; just that one negative vote, a minority control of the will of the majority.

The CHAIRMAN. If we should ever want to annex Philadelphia, Millbourne on the county line, with one hundred and fifty voters, could negative the whole proposition.

Mr. CARSON. Mr. Chairman: The ambition of the city of Chester to swallow the city of Philadelphia is a complete answer to Senator Fisher. The ambition of the smaller has grown to such an extent that the larger city goes down, but we do not want any choking in the process, and we do not want some little obstruction in the gullet to choke the borough to death. I can well understand that perhaps the smaller cities may object, but has there ever been a period of time when large expanded consolidation was promulgated and carried through to success that the smaller ones did not object? Was there not objection by all the small states of the Union to the adoption of the Constitution of the United States? Rhode Island, Connecticut, Delaware, Maryland and other smaller states would have had at their mercy the larger states, Virginia, New York, Pennsylvania and the Carolinas. When the consolidation of the city of Philadelphia took place in 1851, twenty-four outlying districts were brought in under the general consolidation act; all those districts, Spring Garden, Manayunk, and others, I will not name them all, resisted. They would have been villages today under different forms of self-government, some enlightened in their view of public questions, and others exceedingly narrow, but all shivering under the dread of some superior power which history has shown has been exerted for the general good, and not for the oppression of the particular objector. I think it better to let it remain as it is and not to put it into the power of the little community to interrupt great public improvement.

Mr. FISHER. Mr. Chairman: I presume that this ought not to be raised by someone from the country.

Mr. CARSON. You observe that Chester does not object at all.

Mr. FISHER. Mr. Chairman: I know our neighbors in Allegheny county have had this question up before them many times. The larger municipalities naturally want to annex the smaller municipalities. If this provision prevails you may as well exclude the smaller municipalities from any voice whatever in the proceedings, because the larger municipality will always outvote the smaller one.

Mr. CARSON. Is not that natural?

Mr. FISHER. Mr. Chairman: It is natural. But suppose the smaller municipality does not want to be annexed and there are good reasons for it. It takes away the freedom and robs the smaller municipality of any voice whatever in the proceeding. I merely want to call attention to this matter in order that we may act upon it with understanding.

Mr. CARSON. It strikes me as inevitable.

Mr. FOX. Mr. Chairman: I feel that Senator Fisher is quite right in making this suggestion. We have had practical experience of that kind in our own city. We have lying immediately to the west of us what is known as Wilson township. As you ride out from Easton through Wilson township, you would be unable to discover any difference between the two municipalities. The people of Easton have been trying for some years to persuade the township of

Wilson to come into the city, but thus far without success. They say they prefer to raise their own taxes and improve their own highways, and conduct their government as it has been for many years. Now, it seems to me that the suggestion which former Attorney General Carson has made with reference to historical precedence is against him rather than for him, because, while it is true that in the original federation of the Union as now constituted, some of the smaller states did object, they did finally come in by their own consent, and not by the vote of the larger states. The analogy, if followed out in this instance, would require the consent, as it seems to me, of the smaller municipality before it could be swallowed up by the larger municipality, and I think, therefore, we should pause and see if we could not wisely change this section which has been recommended by the committee so as to permit the question of annexation to be determined by the municipality which is invited to come into the larger municipality.

Mr. ALTER. Mr. Chairman: So far as the annexation of boroughs to second class cities is concerned, and that is the only part of the law relevant to this matter that I am familiar with, the present statute law requires a separate vote of the borough proposed to be annexed and the consent of the majority of the voters in that borough. We have had this subject before us a number of times in Allegheny county. I think I spent a good part of my time during the session of 1911 in helping to prevent the passage of a bill providing for what we call forcible annexation, and whenever that subject has been agitated it has created a great deal of feeling and intense anxiety upon the part of residents of large communities near to the city of Pittsburgh, the people of which have always been greatly opposed to being forced into the city. From time to time a borough has been annexed to the city, but always with the consent of the majority of the voters of the borough. Whenever there is a proposal to change the law so as to permit what is called forcible annexation, there has been great public excitement. I would like, Mr. Chairman, to offer an amendment to this section, so that after the words "proposed boundaries" in line five, there would be inserted these words: "including a majority of such electors resident within the proposed added area," so that the section would be amended to require the consent of the majority of the voters of the proposed added area just as at the end of the section it requires the consent of the majority of the voters of the proposed excluded area intended to be included.

Mr. FOX. Mr. Chairman: I second the amendment.

Mr. PEPPER. Mr. Chairman: The committee accepts the amendment.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

NEW ARTICLE, SECTION 5.

The CHAIRMAN. The next section in order for consideration is section 5 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 5. The general assembly may provide for the creation of classes of incorporated districts wholly or partly within the boundaries of one or more municipalities and may vest in such incorporated districts one or more of the powers already exercised by the municipalities within their respective boundaries or additional powers, and may make any power so vested an exclusive power of the incorporated district or a power concurrent with the municipalities wholly or partly within their respective boundaries; provided, that no such incorporated district shall be created or its boundaries extended or its powers increased except by the consent of at least a majority of such electors resident within the proposed boundaries of the incorporated district as shall vote on the question at an election which shall be held as may be provided by law.

On the question,

Will the Committee adopt the report?

INCORPORATED DISTRICTS.

Mr. ALTER. Mr. Chairman: May I ask the chairman of the committee whether there is any limit to the number of classes of such incorporated districts contemplated by this section?

Mr. PEPPER. Mr. Chairman: I think no other limit than that of legislative discretion. The committee was sensible of the difficulty to which attention is called by the question, but has been unable to devise a workable scheme of limitation. The committee wished to make provision, for example, for the incorporation or the creation of drainage districts, districts for the reclamation of lands lying along a river and subject to floods, lands lying in several municipal divisions of the state. The committee also had in mind the importance of making provision for the situation which often arises just outside the limits of a great municipality, where, for instance, the police jurisdiction ends at the city line, and there is no co-ordination between the police on one side of the line and the police force in the county or township next adjacent. Then there is the matter of parks, playgrounds, and other public places which might be advantageously placed within the authority of a single commission or body, within and without the limits of a municipality. When we came to consider all the possible kinds of unobjectionable districts of this sort that might be created, we found it impossible to think of a satisfactory way of setting any limit, and decided that the thing might safely be left to the legislative discretion. I should be most happy to accept any limitation which suggests itself to Mr. Alter, if one can be formulated.

Mr. ALTER. Mr. Chairman: I have no suggestion to make as to the permissible number of classes, but was wondering if the section remains as it now is, merely indicating that classes may be created, but containing no provision as to the number of classes, whether the supreme court would not feel it its duty, as it did under the Constitution of 1873, to prescribe how many classes it would consider proper. In the Constitution of 1873, the legislature created what was determined to be a necessity for classification as to cities, but made no provision as to how many classes there might be. Of course, there was no expressed provision that there might be classes, but the supreme court held that there was an inevitable necessity for the creation of classes of municipalities. Then the supreme court proceeded to prescribe how many classes there might be. Now, it occurs to me, Mr. Chairman, that if by this section we create an express provision for classification without prescribing how many classes may be creat-

ed, the supreme court might treat that, and probably would treat that, just as they treated the inevitable necessity for classification under the Constitution of 1873, and consider that it is their function to prescribe the number of classes.

Mr. PEPPER. Mr. Chairman: May I ask the gentleman whether the necessity for classification under the Constitution of 1873 did not grow out of the fundamental prohibition upon special or local legislation?

Mr. ALTER. Mr. Chairman: Yes, sir.

Mr. PEPPER. Mr. Chairman: It seems to the committee that the court was driven to the principle of classification by the prohibition upon special or local legislation. This section, in effect, permits special legislation or local legislation of the kind here specified; namely, it permits legislation adapted to the needs of particular localities, or to meet special conditions; and, therefore, it is not required that the court should save the validity of some, or determine the validity of other legislation on the question of classification. That was our thought.

Mr. ALTER. Mr. Chairman: I see the matter has been carefully considered by the committee, and I merely desired to make certain that it had been. Probably their conclusion is correct.

Mr. PEPPER. Mr. Chairman: I should not like to sail under false colors. I have neither drawn this section nor given it anything like the amount of study which has been given to it by the chairman, Mr. English, who is unavoidably absent; but I think I correctly state what was in his mind and the mind of the Secretary. These two gentlemen have been in consultation on this subject.

Mr. THORPE. Mr. Chairman: I would like to ask whether there is any possibility that a municipal corporation might be created within a municipal corporation.

Mr. ALTER. Surely.

The CHAIRMAN. It does not seem to the Chair that that could happen.

Mr. PEPPER. Mr. Chairman: I think that if the people affected were to so far forget themselves as to vote in favor of duplicating government within the limits of their municipality, they might subject themselves to two governments in one under this section.

The CHAIRMAN. The punishment would seem to the Chair to be severe.

Mr. PEPPER. Mr. Chairman: Particularly severe punishment.

Mr. FISHER. Mr. Chairman: This is an entirely new provision. It does seem to me to be attended with some difficulty. "The general assembly may provide for the creation of classes in incorporated districts wholly or partly within the boundaries of one or more municipalities and may vest in such incorporated districts one or more of the powers already exercised by the municipalities within their respective boundaries or additional powers, and may make any power so vested an exclusive power of the incorporated district or a power concurrent with the municipalities wholly or partly within their respective boundaries." Municipalities could then create one corporation within another corporation. For instance, Philadelphia might be

classified so that her schools could be separated and placed under entirely different managements.

Mr. PEPPER. Yes, sir.

Mr. FISHER. And also the police power?

Mr. PEPPER. Yes, sir.

SECTION 5 OF NEW ARTICLE POSTPONED.

Mr. FISHER. And any other function of municipal government. It seems to be attended with a great many possibilities, and I should like to have the author present to explain the proposition. I would, therefore, move that further consideration of this section be postponed until Mr. English is present.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

NEW ARTICLE, SECTION 6.

The CHAIRMAN. The next section in order for consideration is section 6 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 6. The general assembly shall not delegate to any special commission, private corporation or association any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: That, sir, is identical with section 20 of article III of the present Constitution.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

NEW ARTICLE, SECTION 7.

The CHAIRMAN. The next section in order for consideration is section 7 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 7. The officers of all municipalities shall be elected at a municipal election or appointed by an officer or agency of the municipality as may be provided by law.

On the question,

Will the Committee adopt the report?

MUNICIPAL OFFICERS.

Mr. PEPPER. Mr. Chairman: Before the question is put, let me call the attention of the Commission to the fact that this section makes two changes in the existing law. In the first place, it permits the legislature to provide for the appointment of county officers, but

it will be observed that the appointment must be by an officer or agent of the municipality, that is, the Governor cannot exercise the power of appointment here conferred. Then in the second place, that the officers of all municipalities must be elected or appointed locally. I fancy that that principle is not to be questioned in its application to cities, townships, boroughs and counties, but possibly it is not a necessary provision for a school district, or for one of these incorporated districts that are contemplated by the section which has been laid aside for the present. I think it might possibly be well that the officers of such a body as that of a school district should be appointed by some other than a local agency. The result that I am suggesting would be obtained if we amend the section in this fashion: "The officers of all counties, townships, cities and boroughs shall be elected at a municipal election or appointed by an officer or agency of the municipality as may be provided by law." Now, that would leave the legislature to prescribe the way in which the officers should be appointed or elected in the case of any other municipal division than the four specified divisions. In order to bring that matter squarely before the Committee, I move an amendment of the section reported by the committee in such fashion that the same may read: "The officers of all counties, townships, cities and boroughs shall be elected at a municipal election or appointed by an officer or agency of the municipality as may be provided by law."

Mr. KELLY. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

The CHAIRMAN. The Chair understands that this makes it possible to appoint all county, city, township, borough and school district officers. Is that correct, Mr. Pepper?

Mr. PEPPER. Mr. Chairman: Yes, sir. It gives the legislature the power to make that prescription, but in every instance it must be a local appointment and not an appointment by any officer of the state government or any municipal officer of the commonwealth outside the place affected.

The CHAIRMAN. Sheriffs, district attorneys and county officers could be appointed if the legislature so provided?

Mr. PEPPER. Mr. Chairman: Yes, sir.

Mr. FOX. Mr. Chairman: I would like to ask Mr. Pepper whether he has in mind a provision relative to Philadelphia for the appointment of the prothonotary by the court? Is there anything in this section which would militate against that?

Mr. PEPPER. Mr. Chairman: There is a subsequent provision in this report on that section, which I will read in answer to Judge Fox's question. "Section 9. Prothonotaries, clerks of the courts, recorders of deeds, registers of wills, county surveyors and sheriffs shall keep their offices in the county town of the county in which they respectively shall be officers." I find that that is not the section I intended. There is a provision in another section, I think section 13.

Mr. CARSON. It is section 13.

Mr. PEPPER. It is in section 13 of the report of this committee, which you will find on the calendar before you. In other words, the

present status is continued except in the case of the larger municipalities.

Mr. CARSON. Mr. Chairman: I understand Judge Fox did not quite hear what was said, sir. I think there was some conflict between this and the judiciary article relating to the appointment of prothonotaries.

Mr. FOX. Mr. Chairman: I made the inquiry as to whether there was any conflict, because we had not passed the section of the judiciary article.

Mr. CARSON. Mr. Chairman: We want to guard the judiciary article against any invasion.

Mr. FISHER. Mr. Chairman: Under the discussion of this section, I find myself again edging towards democracy. It seems that this provides—

Mr. ALTER. Mr. Chairman: I hope the gentleman from Indiana uses the word in its broadest sense.

Mr. FISHER. Mr. Chairman: It seems to me that this provision for the appointment of municipal officers is one that ought to receive very careful consideration before we give it our approval. It opens up a very broad field of legislation.

Mr. CARSON. Mr. Chairman: Are your county prothonotaries elected by popular vote out in the state generally?

Mr. FISHER. Mr. Chairman: This would make possible a policy of popular election of municipal officers if the legislature saw fit to so legislate and it was approved by the Governor. In order to test the sense of the Commission, I move to strike out the words "or appointed by an officer or agency of the municipality," striking out the appointive power.

Mr. ALTER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment to the amendment?

Mr. PEPPER. Mr. Chairman: May I ask, sir, where the relationship is between the proposal just made by Mr. Fisher and the amendment offered by me to substitute for the word "municipalities" the words "counties, townships, cities and boroughs?" The reason that I ask this question is that I think Senator Fisher's purpose would be perfectly subserved if that amendment were first adopted and then this proposal were made. I think that the amendment might be cleared out of the way with advantage either by being adopted or rejected.

Mr. FISHER. Mr. Chairman: That is the proper procedure and I withdraw my amendment.

Mr. ALTER. Mr. Chairman: I withdraw my second to the amendment.

On the question recurring,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

Mr. FISHER. Mr. Chairman: I renew my motion for amend-

ment to strike out the words "or appointed by an officer or agency of the municipality as may be provided by law."

Mr. PEPPER. Mr. Chairman: I accept the amendment.

On the question recurring,

Will the Committee adopt the report as amended?

SECTION 7 OF NEW ARTICLE POSTPONED.

Mr. FOX. Mr. Chairman: I am a little afraid that is too sweeping. I am not very familiar with the municipal branch of the law, but there are certain officers, as I recollect it, who are appointed by agencies of the municipality. If I am not mistaken, the city engineer, certainly the city solicitor, the chief of police and other officers are appointed by the commissions or councils of the city. If we cut this out entirely, it seems to me we would be placing the municipality in an embarrassing position. I would prefer to have the advice of Mr. English, who is thoroughly posted on these questions, and I move, therefore, that we postpone further consideration of it until he is here.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

It was agreed to.

NEW ARTICLE, SECTION 8.

The CHAIRMAN. The next section in order for consideration is section 8 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 8. No person shall be appointed to any office within any county who shall not have been a citizen and inhabitant therein one year next before his appointment, if the county shall have been so long erected, but if it shall not have been so long erected, then within the limit of the county or counties out of which it shall have been taken.

On the question,

Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: This is identical with section 8 of article XIV of the present Constitution.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

NEW ARTICLE, SECTION 9.

The CHAIRMAN. The next section in order for consideration is section 9 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 9. Prothonotaries, clerks of the courts, recorders of deeds, registers of wills, county surveyors and sheriffs shall keep their offices in the county town of the county in which they respectively shall be officers.

On the question,
Will the Committee adopt the report?
It was adopted.

NEW ARTICLE, SECTION 10.

The CHAIRMAN. The next section in order for consideration is section 10 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 10. The compensation of county officers shall be regulated by law and all fees which county officers may be authorized to receive shall be paid into the treasury of the county or state as may be directed by law.

All county officers shall be paid only by salary for services performed for the county, state or any political subdivision of either, or for any other official service; and all laws providing any other form of compensation are declared to be repealed.

On the question,
Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: I would like to ask Mr. Pepper what is the meaning of these words "and all laws providing any other form of compensation are declared to be repealed."

Mr. PEPPER. The section which has just been read by the Secretary is identical with section 5 of article XVI as it was amended by the Commission with the omission of the words you mention.

Mr. CARSON. Mr. Chairman: What bearing has that on the question we had the other day with regard to the compensation of registers of wills in Philadelphia county?

The CHAIRMAN. They will be paid a salary by the state for services rendered to the state.

Mr. CARSON. Mr. Chairman: It reads, "and all laws providing any other form of compensation are declared to be repealed." I suppose it is meant to be an unnecessary expression.

Mr. PEPPER. You are right. We thought it was.

On the question recurring,
Will the Committee adopt the report?
It was adopted.

NEW ARTICLE, SECTION 11.

The CHAIRMAN. The next section in order for consideration is section 11 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 11. The general assembly shall provide by law for the strict accountability of all municipal (county, township and borough) officers, as well for the fees which may be collected by them as for all public or municipal moneys which may be paid to them.

On the question,
Will the Committee adopt the report?

Mr. PEPPER. Mr. Chairman: Let me say that this is identical with section 6 of article XIV, excepting that the article as it stands in the present Constitution limits the principle of accountability to

county, township and borough offices, and the amendment proposed by the committee includes the word "municipal," so as to make it coextensive with all municipal subdivisions of the commonwealth and not confined within the limitations specified.

Mr. CARSON. Mr. Chairman: It might seem to some hypercritical person comparing the language of the two sections as proposed that the omission of the words "county, township and borough officers" exonerates those officers from accountability. I mean a borough might say, "We are not a municipality." I do not know whether they could do it with success, but they might so argue.

Mr. PEPPER. Mr. Chairman: Section 1 defines what a municipality is, but apart from that, the copy of the report of the committee that I have before me adds the word "municipal." Is that correct, Mr. Secretary?

The SECRETARY. That is correct.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

NEW ARTICLE, SECTION 12.

The CHAIRMAN. The next section in order for consideration is section 12 of the proposed new article of the Constitution, the report of the special committee on local government being that the proposed section shall read as follows.

The Secretary read the proposed section as follows:

Section 12. Changes in the organization of a municipality shall be made only by
(a) An act of the general assembly ratified by a majority of the electors of the municipality voting thereon at a municipal or special election designated in the act; or

(b) An ordinance of the municipality ratified by a majority of the electors of the municipality voting thereon at a municipal election; or

(c) By a petition setting forth the proposed change signed by ten per centum of the electors of the municipality presented to the ordinance-making body of the municipality and ratified by a majority of the electors voting thereon at a municipal election.

On the question,

Will the Committee adopt the report?

ORGANIZATION OF MUNICIPALITIES.

Mr. ALTER. Mr. Chairman: I would like to suggest to the chairman of the committee that this provision would open the door for a wonderful variety of municipal forms of government in this commonwealth. It strikes my mind on a superficial examination that the section is very unwise.

Mr. PEPPER. Mr. Chairman: Might I ask the gentleman from Allegheny to develop his thought a little for the information of the Committee?

Mr. ALTER. Mr. Chairman: Well, first, there cannot be any change in the frame of government of a municipality without its being ratified by a majority of the electors of the municipality. In the second place, a municipality may change its own frame of government without any authority from the legislature by an ordinance of the municipality ratified by a majority of the electors of a municipality voting thereon at a municipal election. In the third place, it

would appear that any municipality may change its frame of government by a new plan being proposed in a petition signed by ten per centum of the electors, and thereupon ratified by a majority of the electors voting thereon at a municipal election.

MR. ALTER IN THE CHAIR.

Mr. SCHAFFER. Mr. Chairman: As I understand the thought embodied in this section it goes the limit in so-called home rule. I am not one of those who are afraid of or captivated by the names of things, and the thing that appeals to me is the thing that is. Now, when you come to study the propositions that are involved in these three clauses of the section, they mean an absolute overturn in the municipal government of the state; they mean that the principle which underlies all our municipal government in Pennsylvania is to be uprooted, because its fundamental thought is—I do not care what it may be in other states that have not our traditions, have not our experience, have not had our great development, and have not our extraordinary population—that the municipalities are the creatures of the state. It seems to me that all municipal government in Pennsylvania ought to be prescribed by the state, and that the municipalities of the state should continue to be the creatures of the state, and that they should continue to discharge as the creatures of the state their obligations as municipal divisions of the state. Beginning with the simplest form of government that we have, that is the township of the second class, in which the government is so simple that there is scarcely any government, there are three road supervisors whose principal and real function is to discharge the duties of the state, to keep the highways in condition and who have very little authority outside of that, up to the city of Philadelphia, the city of the first class in the commonwealth, all are municipal divisions of the state and are the creatures of the state and ought to remain as such. The legislature ought to prescribe their form of government, because otherwise it seems to me we take a step backward in civilization. This is the thing that the code of Napoleon got away from in France, where in every municipality there was a different kind of law, or a different kind of government. The lawyers in Paris did not know what the law was at Versailles, and no doubt that is probably true even yet, because I found in motoring through France that the regulations from little municipal divisions to other little divisions were so different that you had to take them as they were laid down, as you used to do when you drove through France, and you had to pay the octroi as you went from municipality to municipality. They collected it from you because they had different laws.

It seems to me the thing that has made Pennsylvania as great as it has become is that we move forward under a common plan that has a common center, and that center is here in the state government. I mean move municipally, and everybody feels in the smallest municipal division of the state that it is a part of the great whole. I am everlastingly opposed to making Philadelphia still farther outside of the limits of the state. I said, somewhat facetiously, the other night in a talk that I made to some people gathered together socially in Philadelphia, that we were spending in Pennsylvania one hundred million

dollars on the roads in order that a great, a very great many of my friends in Philadelphia might know that the state of Pennsylvania was west of Overbrook. It is only as we are going to keep up the relation of each part of the state to all other parts of the state, and the relationship is closer in Pennsylvania than any other state that I have any knowledge of, that we are going to move forward harmoniously and as a unified whole. The tie that binds Pittsburgh out in the west and Philadelphia together is the policy of the commonwealth which makes the municipalities creatures of the state; they may have and doubtless do have some difficulties and do work out some solutions that are trying at times, but the difference in contrast between that and the form of government which would make Pittsburgh have an utterly and entirely different form of government from anything else in the state, run, if you please, by a single man, called a city manager, is inconceivable. If they were to adopt such a plan in Pittsburgh or Philadelphia, to have such a form of government that my friend Judge Kelly in Scranton felt as alien in as if he went to Berlin, or if all of the small municipalities should have these differing and divergent forms of government that grow out of possibly a misunderstanding of what they mean, but which would have their sources in propaganda in different communities, propaganda that was not based upon experience, and was not based upon tried-out experiments, the very fabric which holds our municipalities together, which gives them a common interest, and which keeps their faces continually turned toward Harrisburg, the seat of the state government, would be rent asunder.

Now, let us stop and read these propositions, because they are startlingly made. I do not want to live in a community in which whimsically every other year, if you please, by massed thought that is propagandized for, there can be a change in government; and yet that is what this would mean, because just see what it says; "Changes in the organization of a municipality shall be made only by," first, "an act of the general assembly ratified by a majority of the electors of the municipality voting thereon at a municipal or special election designated in the act." We have now three forms of government, first, second and third class as to cities, a borough form, a township first class form and a township second class form. We all understand it, and it does not matter where we go we feel on familiar ground; but if this is to happen no city, no municipality can change its form of government unless the electors ratify the change made by the legislature. There could not have been any new city charter for Philadelphia. It would have been utterly impossible. That would have been a dream to be realized years off under political conditions as they existed in Philadelphia, if this had been a law, because the enactment of the legislature, before it could have been crystalized into the completed thing, would have required the consent of the majority of the electors in Philadelphia. It does not matter what the great exigency may be. The opportunity may come to Philadelphia, if you please, under world-wide shipping conditions to become the greatest shipping port in the world, because of its location on fresh water, because of the fact that it has a harbor lying one hundred miles from the sea, and yet the changes in the form of government which would be required to bring that about—the legislature looking particularly and wisely at the question and moving with celerity in

order that the opportunity might not be lost—would be utterly defeated by the failure to take a vote or by adverse vote on the question. But that is not the most striking of these propositions. The second, “an ordinance of the municipality ratified by a majority of the electors of the municipality voting thereon at a municipal election.” That is to say, here in Harrisburg the propaganda is started for some form of municipal government that nobody ever heard of; somebody organizes for it, and the ordinance is passed by the municipality; and under the propaganda ratified by the majority of the electors of the municipality, and Harrisburg has a form of government utterly out of line with all the other forms of government in the state. I think that is fundamentally wrong, because I think, as I have said before, that our greatness as a state grows out of the homogeneousness of our state and the common stand of our people on the problems that confront all of the people similarly situated throughout the state. And so when I come to Harrisburg to talk over some question of municipal government that affects that city, I can sit down with my friend, Mr. McCormick, and discuss their experience under the same form of government and get light from him as to what has happened here. But if this is to be the rule under home rule, so-called home rule, as wide-flung as this, there may be nothing in common between this municipality and the city of the same class in which I live. Then the third is even more striking, it seems to me, in its revolutionary character, because it provides really for the initiative as to municipal regulations, as to municipal government, “by a petition setting forth the proposed change signed by ten per centum of the electors of the municipality presented to the ordinance-making body of the municipality and ratified by a majority of the electors voting thereon at a municipal election.” It does not require the ordinance to be passed by the ordinance-making body; it simply provides that ten per centum of the citizens organized by propaganda shall present a form of government that may be totally untried and utterly experimental, and if that is voted upon by a majority of the people of the municipality it becomes the government. I have been talking with reference to cities, and cities of the third class; but just think what would happen in the townships and the smaller municipalities if people got this idea. There is a community just across the state line from us at Arden, where all the long-haired men and short-haired women get together. They think the whole form of government in Brandywine Summit, Delaware county, is a frightful form of government. They would think that the township form of government as we know it, either first or second class, is utterly wrong. They living across the Pennsylvania line could change the form of government by initiative and adopt such form of government as they thought right for that particular locality, and take it utterly out of harmony with all that the state does everywhere else.

Now, I say no departure that this Constitution can make is as startling and as revolutionary as these propositions are. What I think is meant by home rule, real home rule, is that the municipalities of the state shall be classified as we have already adopted a classification for them, in such way as their peculiar needs can be grouped together, and then a charter provided for each one of those.

groups, all of the members of the same group being substantially similarly situated, which will keep the harmony of all the municipal divisions of the state consonant one with the other. But this revolutionary proposition means that we will have a patchwork of government throughout the state, with laws governing them that no man can fathom. No lawyer in creation could know or would feel safe in passing upon the question as to what the law is in any particular division of the state. And then, it seems to me, comes a very vital proposition wherever these laws, loosely drawn, loosely thought out, relating to municipal government have been enacted. I do not know what the experience of the other gentlemen is on the principle of this thing, but my experience is that when bond issues in these municipalities are submitted to me, not knowing just what ought to be done, and not knowing what the law is, and not living a long enough life to study the law with reference to so varied and widely divergent forms of municipal government, I say, "No, do not touch that kind of investment." And the reason I say to you do not touch it is because I cannot determine whether ultimately the court of final resort in the United States, which may be the Supreme Court of the United States, will determine that that bond issue is valid or invalid. That is the thing that we have to avoid in Pennsylvania; that is the thing that with rare foresight, and with notable conservatism, we have held tight to in Pennsylvania, and provided that all the municipalities of the state can only incur indebtedness in two ways; one by a vote of the people, if their indebtedness is above a certain fraction of their taxable property; and the other is by a vote of their elected municipal authorities if it is below. But how is any gentleman called upon to decide a question that may be vital to some municipality of the state, vital for instance to Scranton, in order to take care of a series of municipal conditions there arising, loans that would run into the millions, how is there to be that certainty that makes for stability of investments and makes for the highest price paid and the cheapest rate to the municipality, if when it comes down to my friend, Judge Gordon, in Philadelphia, or my friend, Mr. Carson, or Mr. Pepper, or some lawyer there, to whom the bankers are saying "Is it safe for us to loan Scranton one hundred million dollars to do the things that she wants to do," he is confronted with a new form of government that he never heard of, adopted by initiative and a popular vote on a propaganda organized to do it? Is not he going to say to himself and ultimately to his client, to protect himself professionally as a lawyer and to protect himself personally from loss, that "I decline to pass on the validity of this loan?" Would not the effect of that sort of thing be that the stability, which makes the municipal investment coming from Pennsylvania salable anywhere, and has set our credit at the very highest in the country, undermined by such a proposition as this if it is engrafted into our fundamental law? As I see it, where I live, and I take more than an ordinarily active interest in the affairs of the third class city; I go out among those people when bond issues are under consideration and debate

them; when municipal officers are elected I take part in the election, primary as well as municipal; and I say there is no demand for this kind of home rule.

The demand of the sober-minded, the demand of the man who thinks, is that there should be just a little more flexibility in the matter of classification. My friend, Judge Kelly, should not be hooked up with you, Mr. Alter, in the classification because your needs are dissimilar. And if there is some community back in the state like Williamsport, not on tide-water, it should not be hooked up with us and its limitations hamper our development and our limitations hamper theirs. But when you divide the classes into a great number—we have divided them into seven—then under that division it seems to me, under a form of government prescribed by the state, under a form of government which keeps the municipalities of the state still its creatures, as they have always been since the foundation of the state, we can work out the very fullest measure of home rule that man ought to have, because there ought to be above everything else, it seems to me, stability of government. The government which is the government of today might not be the government of a year from now if someone interested wanted to propagandize against it; that instability would make all things unstable municipally in the commonwealth.

Mr. PEPPER. Mr. Chairman: The committee has felt it incumbent upon it to present squarely for the consideration of the Commission this proposal for so-called municipal home rule, because the question is one that is exciting a good deal of attention in various parts of the commonwealth, and we should be derelict in our duty if we did not give full consideration to all that can be said on the various sides of the question. The committee I think would never have brought this section in with even such tentative recommendation as set forth in their report if they had supposed that what is herein stated tended to unsettle conditions or to cause lack of stability in the municipal government as the Attorney General has just suggested. We have been under the impression that the serious uncertainty with regard to municipal bond issues and the like throughout the United States has been due to the action of the legislatures of the states upon municipal corporate life and organization where there has been no local restraint in the popular will upon the action of the legislature, and we had in mind that series of cases in the Supreme Court of the United States, *Mobile vs. Watson*, *Shapleigh vs. St. Angelo*, and other cases where the legislature with unrestrained action had changed the forms of the municipal government without local consent, and we had supposed that the provision in the first of the three alternatives mentioned here was a provision in the direction of conservatism, and not of anything that could be described as radical or revolutionary. With regard to the last two proposals we have desired that the Commission should consider seriously how far in the sphere the government we meant to give effect to section 2 of the first article of the Constitution as we have already drafted it or the section of the Bill of Rights which reads as follows: "All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or

abolish their government in such manner as they may think proper." We all agree with that declaration respecting that power of the people so far as the state governments are concerned. We understand that that declaration reflects the inherent right of the people of Pennsylvania to make provision for local self-government within the commonwealth in such fashion as they may think proper, subject only to the provisions of the Constitution of the United States. The question which we precipitate in the Commission by reporting this proposed section is whether that declaration in the Bill of Rights is to be interpreted as applying also to the people living within a municipal division of the commonwealth, as distinct from the people of the commonwealth as a whole. Is it or is it not true that the people in any municipal division of the commonwealth have the inalienable or the indefeasible right to alter, reform or abolish their government in such manner as they may think proper, but subject to constitutional limitations, to limitations imposed by the constitutions of state and nation? That is the question. The advocates of local home rule carry this declaration of the Bill of Rights down into the municipality, and those of us who are more conservative in our thinking limit the declaration in its operation to the state as a whole. We have no desire to press this proposal further than to insure the deliberate attention to it by the Commission.

Mr. CARSON. Mr. Chairman: Is the effect of this to do away with the line of decisions of the supreme court in *Sharpless* against Mayor?

Mr. PEPPER. Mr. Chairman: I do not understand it would, sir. I do not understand that this section if it were adopted would create any uncertainty respecting the validity of bond issues, or make it any more difficult than it is at the present time to determine whether a bond issue has been made with due regard for the formality prescribed by law. I do not think, for instance, that the adoption of the city charter in Philadelphia by the legislature has resulted in creating any doubt or uncertainty respecting the validity of the outstanding obligations of the city. I do not think that any greater uncertainty would have been created had that change come about through the initiative of the population of Philadelphia as distinguished from legislative action. Please observe, Mr. Chairman, that I am simply trying to present the different considerations that have been pressed upon the committee as reasons why the Commission should give its best thought to this subject. I do not wish to be understood as advocating this proposal, but in behalf of the chairman of the committee I am desirous of doing the best I can to see that it is understood in the way that it presents itself to those who are its advocates. They do not regard it as a revolutionary proposition; they regard it merely as taking seriously the declaration of democracy that the people have the inalienable right to determine their form of government. They carry that proposition down into the municipality, and they regard the safeguards—

Mr. CARSON. Mr. Chairman: If you will recall, you divide and subdivide and redivide until you get down to absolute individual independence, and each individual in the community says, "I am going to govern myself as I please, and the rest can do as they please."

Mr. PEPPER. Mr. Chairman: That, sir, is the *reductio ad absurdum* upon which a great many sound propositions have been

wrecked. After all, that is not the proposal here. The proposal is whether or not we have to recognize the principle that this section embodies. As I say, I should like for personal reasons to have it clearly understood that I am not in the position of an advocate of this proposition.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress; with the recommendation that sections 15 and 16 of article III be re-referred.

SECTIONS RE-REFERRED.

The CHAIRMAN. Sections 15 and 16 of article III are re-referred in accordance with the recommendation of the Committee of the Whole.

ADJOURNMENT.

Mr. FISHER. Mr. Chairman: I move that the Commission do now adjourn until 10 o'clock tomorrow morning.

Mr. McCORMICK. Mr. Chairman: I second the motion.

Whereupon, at 6 o'clock P. M., the Commission adjourned until 10 o'clock tomorrow morning.

Senate Chamber,

Wednesday, January 28, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—14.

Carson, Cuyler, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Smith, Stackpole, Thorpe, Schaffer (Chairman).

ABSENT—10.

Alter, Connelly, English, Perrine, Pinchot, Reed, Sulzberger, Tyson, Voll, Warburton.

The CHAIRMAN. A quorum of the Commission being present, the Commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

ANNOUNCEMENT BY CHAIRMAN.

The CHAIRMAN. The Chair would like to announce that two or three members of the Commission are staying here today at considerable personal inconvenience, in order that we may retain a quorum. I happen to know that it will be a very great accommodation for them if they can catch the Limited west which leaves at 12.55 P. M. If it would be agreeable for the Commission to adjourn before that time, I know it would be a great accommodation to those members who have stayed here today.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports from committees at this time?

Has Committee No. 1 anything to report?

Mr. FISHER. Mr. Chairman: I am directed by Committee No. 1 to report the following as an amendment to section 15 of article III.

The CHAIRMAN. The report will be received.

For Report No. 18, see Appendix.

The CHAIRMAN. Has Committee No. 2 anything to report?

Mr. CARSON. Mr. Chairman: Committee No. 2 has nothing to report at this time.

The CHAIRMAN. Has Committee No. 3 anything to report?

Mr. THORPE. Mr. Chairman: Committee No. 3 has nothing to report at this time.

The CHAIRMAN. Has Committee No. 4 anything to report?

Mr. PEPPER. Mr. Chairman: On behalf of Committee No. 4 I beg to offer the following report.

The CHAIRMAN. The report will be received.

For Report No. 19, see Appendix.

The CHAIRMAN. Has Committee No. 5 anything to report?

Mr. SMITH. Mr. Chairman: On behalf of Committee No. 5 I beg to submit the following report.

The CHAIRMAN. The report will be received.

For Report No. 20, see Appendix.

The CHAIRMAN. If the Chair is not too insistent, I would like to state that it will be very greatly to the advantage of the work of the Commission if the reports should now be made as promptly as possible. If we can get all the reports in by next week, the entire preliminary work of the Commission in the Committee of the Whole can be gotten out of the way in the next two weeks' meetings. There are apparently now left less than thirty sections unacted upon.

Mr. PEPPER. Mr. Chairman: On behalf of Committee No. 4, I might say that all the sections referred to us have been made the subject of report saving those which were transferred to the special committee and dealt with under the subject of municipalities. That statement is subject to two exceptions. There is a section which was under discussion here when article XVI was before the committee, the section on which the committee recommended the authorization to issue under certain circumstances stock below par. That provoked debate and was referred back to the committee. It can be brought before the Committee of the Whole for discussion at any time the Chairman thinks proper. There is one section in article XVII which can be brought back as soon as I have an opportunity to confer with Mr. Connelly. We shall then have covered all our ground.

The CHAIRMAN. Has any member of the Commission anything to bring before the Commission? If not, if there is no objection, the Commission will resolve itself into the Committee of the Whole for the purpose of proceeding with the calendar.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I Schaffer, Chairman.

NEW ARTICLE, SECTION 12.

The CHAIRMAN. The Committee of the Whole will resume consideration of section 12 of the new article. The section is divided into three clauses, as will be disclosed by the calendar, and the question is on the motion to adopt the report of the committee on section 12.

The Secretary read the proposed section as follows:

Section 12. Changes in the organization of a municipality shall be made only by
(a) An act of the general assembly ratified by a majority of the electors of the

municipality voting thereon at a municipal or special election designated in the act; or

(b) An ordinance of the municipality ratified by a majority of the electors of the municipality voting thereon at a municipal election; or

(c) By a petition setting forth the proposed change signed by ten per centum of the electors of the municipality presented to the ordinance-making body of the municipality and ratified by a majority of the electors voting thereon at a municipal election.

On the question recurring,

Will the Committee adopt the report?

ORGANIZATION OF MUNICIPALITIES.

Mr. GORDON. Mr. Chairman: I agree in the main with the contention which you made on the floor yesterday, and I do not mean to elaborate upon your argument. Home rule, which is the plea for the introduction of this amendment into the Constitution, seems to be very much misunderstood. It does not mean that any small body of men in a political subdivision shall have the right to govern affairs as they see proper. Home rule, as understood with respect to a state, has a much more comprehensive idea than that. It means that where communities attain largely a communal importance and have communal interests particularly peculiar to themselves, arising out of collectivity, and because of the collectivity—I mean because of the concentration of large numbers of people in one community, duties, rights, thoughts and desires peculiar to them because of their collection thus in a large political subdivision arise—because of that, they may be said to have the right to home rule, and to conduct their affairs so far as that considerable body is concerned, and their communal interests in a way most protective of the communal interests and productive of good where it does not conflict with the larger political ideas of the state. Hence, I do not see that the claim for home rule, we will say in a township, has any force. A sparsely settled township has no peculiar communal interests; indeed, its political interests are all exclusively of the community and the result of attachment and relationship to other like communities; but a city, a town, certainly a city may have peculiar interests quite diverse from all the rest of the state. I mean peculiar social interests, and they ought to be permitted to govern their own particular affairs according to their own desires as to what is most formative of good, and therefore, I accept the conclusion which you arrived at in the main and I shall vote against the last two of the provisions in this report of the committee, and they are the provisions which allow a township, we will say, by a vote of the people in the township, to change their organization and permit ten per cent of the citizens of such a political subdivision on petition to change their organization on a vote of the majority of the residents in the township. For the reasons which I have stated and which might be easily elaborated and illustrated by example, I am opposed to the thought as introducing merely the vagaries of individuals and not necessary to protect any particular communal interest. The first proposition in the report of the committee is an entirely different one, and I am in favor of that in principle. Under that a change in the organization of the municipality, and “municipality” is here used to include all the political subdivisions of the state, changes in the organization of a municipality may be made by the legislature subject to the approval of the citizens

at an election. Most of the abuses in legislative interference with municipalities have arisen from two causes. The first has been from the restrictions upon special legislation in the Constitution governing the legislature. By reason of the hard and fast rule established it was almost impossible to govern cities, we will say second or third class cities, that had particular wants, according to their desires. They had to be collected into classes and those classes were so few in numbers that cities with diverse interests, wholly diverse interests, were governed by the same law. We have remedied that so far as it can be remedied with changes as to special legislation, and by giving the legislature greater power of classification, so that is not likely to arise in the future; that particular wrong of governing municipalities by classes so that the well-being of all was not considered. The next abuse of legislation of this character was by the legislature changing at its will very often things which were not commendable in the municipal government of cities, and by importing into those communities methods of government distasteful to the citizens. We would not have to carry our minds back very far to recall when one of the great cities of the state within four years had two different forms of government proceeding from the legislature, originally not one in accordance with the desires of the citizens, and not one of them submitted to the will of the voters of the city, but imposed upon them by the legislature. I think that should be made impossible in the future. You, Mr. Chairman, yesterday suggested the recent charter governing the city of Philadelphia which you said could not have been in operation today if a referendum had been required and if the citizens had had the right to first vote upon it. Now, that is true, but it is in operation. We have the benefit of that charter. We have just started upon it. So far it promises well, but it should not be molested now without the popular will. The next legislature should not have the right to change that by another charter unless the people of Philadelphia desired it. I think as to the large cities, taking them now as established in accordance with some general law, and with some general political principle, and in the main satisfactory, that hereafter there ought to be no change in the organization of those municipalities by legislative act except with the will of the voters of those municipalities. In saying this, I am speaking particularly as a Philadelphian. In the exigencies of politics, in the exigencies of the ambitions of parties, there may be an effort in the future to disturb the situation in Philadelphia. I should not like to see that done, except with the concurrence of the voters of that city. I would like to hold fast to what we have, and if at any time in the future it be demonstrated by actual operation that there should be changes, application can be made to the legislature, and upon the passage of the act which meets the approval of the citizens, those changes can be made; but I should like this report of the committee to be adopted, in so far as the first section is concerned, as a barrier against any tampering with the organization of cities embracing millions of people, except with the concurrence and approval of the citizens affected. The subject is full of thought and if it were not for the fact that the Pennsylvania Limited west goes at such an early hour, and so many of the members want to take it, I should want to elaborate. I think it would be a grave mistake not to adopt this provision. It is not carrying the referendum to the point of having municipal government depend-

ing upon the vagaries of individuals, but so far as the great cities are concerned, it would be allowing the cities, which are almost empires in domain and population, to have a voice in their government. Therefore, when it comes to a vote upon this portion of the report of the committee, I shall ask for a division of the question, so that there may be a separate vote on the first part of this report, that under the designation (a).

Mr. FISHER. Mr. Chairman: I think anybody familiar with the legal aspect of this subject will immediately agree that the second and third provisions are entirely impossible. The effect of those would be to enable a municipality or a section of the state to practically withdraw from the control of the state at large. Now, we all know that the nature of the municipality is that it is simply an agent of the state, and the state endows it with so much of its own power as to enable it to function in ways that are peculiar and advantageous to the community. Now, we ought not to do anything that would loosen the control of the state over its own creatures. If legislation can be originated upon petition of ten per cent of the voters of any municipality, approved by a popular vote, no one can foresee to what extent that may be carried, but I am quite inclined to agree with Judge Gordon that there is merit in the first provision. I would not want, however, to support it in the form in which it now appears. It looks to me as though it would enable special legislation. The clause (a) reads: "An act of the general assembly ratified by a majority of the electors of the municipality voting thereon at a municipal or special election designated in the act." Could not any particular city or borough or township receive legislation setting it apart from the residue and remainder of its class in the state? If that is true, if that be the effect of it, I would not want to support such a measure. I am willing, however, to support a provision which will require the voice of the people affected before a fundamental change can be made in their system of government. I believe that the proponent of this section is not present and I should not want to propose any amendment in his absence. I therefore move that the further consideration of this section go over until next week.

The CHAIRMAN. You mean section (a) ?

Mr. FISHER. Mr. Chairman: The whole of section 12.

The CHAIRMAN. The whole three clauses?

Mr. FISHER. Mr. Chairman: Well, I am willing to receive suggestions on that. I will confine my motion to clause (a).

Mr. PEPPER. Mr. Chairman: If I might make a suggestion at this point, it seems to me that the difficulty is that when we have discussed and debated matters of this sort and have in our own minds reached a reasonably clear conclusion, a good deal of time is wasted unless we require some action as the result of the debate. I think I can speak for Mr. English to the extent of saying that he will feel that we have dealt with him with entire consideration, if it is understood that any action taken here may be regarded as not barring him from bringing up at any time for a reconsideration any of the matters that are acted upon. I should like to suggest that if we simply debate for a half an hour or for an hour without action we really waste time if we suspend debate, and I fancy that most of us in the room have at least a tentative conclusion in regard to this section.

Mr. McCORMICK. Mr. Chairman: On first consideration of this

subject which is a very large one,—I think I agree with many of the remarks that have been made upon it, but I do not agree with Mr. Pepper that our minds are clear and that we could act intelligently at this time. There are a good many doubts in my mind about the matter, and one of them I would like to have cleared up now, if I may. Do I understand that the adoption of clause (a) would require in the future, if any general legislation would pass governing, say cities of the third class, that that would require adoption by the individual cities, that is, would require the submission of it at the general election?

The CHAIRMAN. Yes, sir.

Mr. McCORMICK. Mr. Chairman: And any change in any county government would require that each county would have to vote upon that change?

The CHAIRMAN. Yes, sir.

Mr. McCORMICK. Mr. Chairman: It opens up some very wide vistas, I think, and I think it ought to be thoroughly discussed. My mind is open on this whole subject. Another thought that comes to me this morning after a very hasty consideration is that it might be possible to leave (b) and (c) in as they are, and to make such action subject to the approval of the general assembly. In other words, each community knows its own needs. They are different in different sections of the state, and their needs are put through councils and then approved by a vote of the electors, and then the communities could go before the legislature, and say this is what we need, and then the legislature determines whether or not that destroys any general legislation or fundamental principles which would endanger the situation.

The CHAIRMAN. That is what they do now.

Mr. McCORMICK. And that is the present law, is it?

The CHAIRMAN. I mean to say third class cities of the state have an organization. They have formulated what is known as the third class city code and presented it to the legislature.

Mr. McCORMICK. I know, Mr. Chairman; I was once a member of that when I was mayor of Harrisburg. But in such cases we were not speaking for all the people. It was not voted upon by all the people. Of course, individuals and groups have the right to make a proposal to the legislature through their representatives, and coming with the force of a vote of the majority of the electors to the legislature it would certainly indicate to the legislature the needs in the minds of a majority of those people at that particular stage in their government. I am not convinced that this is the right thing to do, but there are a lot of questions that can be brought up concerning these clauses that I would like to have them further debated and considered, and therefore I am not ready today to vote upon them.

The CHAIRMAN. May the Chair, for information, suggest this thought to the Commission? I am entirely in sympathy with Judge Gordon's point of view in dealing with a single municipality. I think you have classes in legislation as applied to third class cities and first class townships. There are many very great first class townships in the state. Would they be so great, if each municipality would put a negative by its vote in this broad language on any change in the organization of any municipality? We would be in the realm of special legislation immediately. May I suggest this? I have given

this subject some thought. I suppose the proper thing would be to leave the Chair, but I want to say this for the information of the Commission. In the matter of assessment for municipal improvements, as to each particular class of municipality, third class cities, for instance, there are provisions in the law that are applicable to all third class cities.

Now, if any such third class cities vote against a change in organization that all of the other third class cities could adopt, then as to the city that stayed out it would not be in any way within the reach of all the subsequent legislation that would be passed affecting cities of the class. My thought is, with Mr. Pepper, that if we debate these questions and do not decide them in the Committee of the Whole, we waste a great deal of time. With reference to the subject which Judge Gordon has in mind as applied to the city of Philadelphia, if I may offer this suggestion to you, I had a letter this morning from Mr. Connelly, who, I am much pleased to say, has apparently recovered his health, and expects to be here next week. If some project of this kind can be formulated applicable to the only city of the first class that would be known as a legislative class, that would be independent on the subject. When by classification we are dealing, as I think we have concluded in our investigation on other lines, with twenty-five third class cities in the state, if one or two or three of them would negative the organization that is made by the legislature for them and hold on to their old organization, for instance, then the endeavor to legislate for them is going to be one that is fraught with the very greatest of difficulties.

Mr. FISHER. Mr. Chairman: I have given a little consideration to this section, which provides for changes in the organization of the government of municipalities. Then follow three methods. What does it mean by changes in organization? Does that mean a change from one municipal class to another municipal class?

The CHAIRMAN. No. I think it means that it can change the method, any change.

Mr. FISHER. Any change. Any change in the government at all?

The CHAIRMAN. Yes.

Mr. FISHER. Mr. Chairman: And that would give power to the municipalities to go clear beyond the powers of the legislature in bringing about internal changes in its local government.

Mr. McCORMICK. Mr. Chairman: I was just going to anticipate that question.

Mr. FISHER. Mr. Chairman: That first clause (a) is undoubtedly open to the objection that it will open the way for the old abuse of special laws. Unless Judge Gordon's thought can be reduced to some general provision which will make it applicable to classes so that municipalities may change from one class to another already created by law, by a popular vote, I would not want to support that clause at all. With that view of it, I think all three classes are objectionable, but in deference to Mr. Pepper's suggestion and expression, I will withdraw my motion to defer action and consent to a vote being taken forthwith.

The CHAIRMAN. May I suggest that the inherent difficulties in legislation as to a single city of a single class do not exist. It occurs to me that a provision could be made in a municipality which would apply to a single class like Philadelphia; but I am looking at the

government as it exists in the state at large which would cover all township matters.

Mr. GORDON. Mr. Chairman: I cannot see that, sir.

The CHAIRMAN. If this is voted down along the lines that you have put forth as applying to the city of Philadelphia, you could not legislate with certainty. This I think opens an entirely different field.

Mr. GORDON. Mr. Chairman: This is almost a conversation.

The CHAIRMAN. Yes.

Mr. GORDON. How would this do: "Section 12. Changes in the organization of cities of the first and second class may be made only by an act of the general assembly ratified by a majority." There is only one city of the first class.

The CHAIRMAN. There ought to be two now. I think with Judge Kelly they will be taken out of the class of Pittsburgh, because their needs are different. But I would be a little fearful unless we are sure that is going to happen. It ought to be confined to cities of the first class alone.

Mr. GORDON. Mr. Chairman: I move to amend by striking out clause (b) and clause (c) and inserting in section 12 at the beginning the words "cities of the first class" and striking out the words "a municipality," so that the same shall read "Changes in the organization of the cities of the first class shall be made only;" by striking out the letter (a) leaving the entirety to read, "Changes in the organization of cities of the first class shall be made by an act of the general assembly ratified," and so forth.

Mr. KELLY. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. FOX. Mr. Chairman: In reference to the amendment that has just been offered by Judge Gordon, which amendment proposes to change the section to read "cities of the first class," the cities of the first class are defined by the acts of the legislature, and it occurs to me that it is possible that the legislature might change the classification and propose to include cities that now should not be properly included in this. I therefore suggest to Judge Gordon that he use rather the language of the act that makes classifications and say "in cities containing a population of one million or over the acts of assembly may change."

Mr. GORDON. Mr. Chairman: I accept the suggestion; there is a possibility that there might be hereafter a classification that would not be covered by that exact language, but I accept the amendment.

On the question,

Will the Committee agree to the amendment as amended?

Mr. CARSON. Mr. Chairman: We are certainly discussing a question here which is of vital importance. Now, I am quite free to admit that conditions of society ought not to be reduced to such a state of stable equilibrium that any possible amendment in the direction of an expanded area for municipal action is denied. But I feel strongly that the language, "changes in the organization of cities of the first class," shall, under Judge Gordon's amendment, be made almost entirely a matter for local vote and local control, is introducing into this commonwealth the seeds of disintegration. It has been hard enough in the state of Pennsylvania, owing to a variety of causes, to develop what you call a state sentiment. We

travel in other parts of the Union, and we encounter a phrase which may or may not be meant as reproachful, that we have not the feeling which they have in Massachusetts or in Virginia, and there is not the state pride or that state unity of view which is characteristic of those other commonwealths. We are all the time having Massachusetts thrown in our faces as an example to be followed, or something from the Old Dominion, which ought to be followed. Now, I have traveled over this commonwealth, back and forth, and viewed it from every different point of subdivision as indicated by the maps which are scattered through Smull's Handbook. If you look at those maps you will find numerous districts, senatorial districts, judicial districts, school districts, agricultural districts, mining districts, and so on. It gives one a confused notion of the sectionalism, so to speak, which our varied industrial life and oother various interests have imposed upon this state. Massachusetts was settled by people of one blood and one creed, all of pure English blood and Puritan faith; Virginia was settled by people of English blood and all of one faith and one sect; but Pennsylvania, composed as she is, was of Dutch, Swedes, English, Germans, Welsh, Irish, Scotch, Huguenots, and some Swiss, composed moreover of various religious sects, all of them settling in that portion of the commonwealth in the southeastern triangle, barred off from the rest of the state by the Kittatinny mountains at the Delaware Water Gap, and crossing the Susquehanna river above us at Fort Hunter, making it very difficult in that little section, which constituted about a fifteenth part of the commonwealth, to develop a homogeneity of work and of sentiment, and that was the problem that ran on during the whole time from the charter of William Penn until the Declaration of Independence. In addition to that racial and religious difference in our composition, we had geographically certain differences and physical obstacles to overcome; five distinct ranges of mountains with their parallel valleys ran through the center of the state, each of them with an independent population of its own, and physically that situation has controlled the development of the state and the sentiment of the state very largely. The city of Erie, away off there on Lake Erie is in closer contact with Buffalo on the east and Cleveland on the west than to any city in Pennsylvania. To climb into Corry, some twelve hundred feet or more across a range of mountains, and get into the valleys pierced by the Philadelphia and Erie and Northern Central, and to get to the central part of the state, seems to be difficult. People go in the line of least resistance. Scranton reaches the city of New York much more readily than Philadelphia. Pittsburgh has her face towards the great valley of the Ohio and looks down that stream into the valley of the Mississippi. So we have these physical difficulties to overcome as well as the racial and political ones. Then we have various deposits of coal and oil and lumber, immense agricultural and manufacturing pursuits, and so on. The consequence is that it is not at all surprising that for a long time there did not exist that sentiment of pride in the great commonwealth of Pennsylvania which we ought to have had, but which from our mixed blood did in time develop into the greatest American commonwealth of this continent.

Now, here are the seeds of reactionary disintegration. Every little municipality which is dissatisfied with the superior power takes the

bit into its teeth and resents the restraint. It is an uncomfortable thing for me to sit in a room with a person who has nervous twitchings, and it is more uncomfortable for me to sit in a room with persons who have nervous mental twitchings, who are all the time disturbing public peace, public order and public quiet by some notion or fancy which they are seeking to work out on some theory of what seems to be a misapplication of the language quoted yesterday from the Bill of Rights regarding the right of the people to change their form of government. That declaration was written into the Constitution against the tyranny of kings, against the tyranny of the dungeon, against the bloody sacrifice of the scaffold; but where in this state is there any tyranny, either threatened or actual, either in the imagination or founded upon facts, against which these people have the right to protest and say "Now, we intend to take the exact language which was on the lips of our suffering forefathers and array ourselves against the gentlemen in the legislature as the sovereign power of the state, and array ourselves against the system against which our sense of liberty and freedom revolts?" It will not do. I mean entirely aside from those business questions which you, Mr. Chairman, indicated so well from the floor, about difficulties of obtaining money on county bonds for the improvement of county roads or for the improvement of the streets of the borough or for the institution of a town. Every little community will set up a will of its own. Sovereignty is what this amendment seeks to take out of the hands of the state and repose in the hands of the municipality, whether it is first class or second class, matters but little. The whole line of decisions of the supreme court from the time of Sharpless against Mayor down will become obsolete—I have to go on my recollection with regard to that—but I recall that Chief Justice Black, in his opinion, says that no greater question was ever presented to a court in America than was decided in that case, wherein the question was, what is the nature of a municipal government? Is it a sovereignty or an agency of the state, an agency defined in the decision of Fox against Mayor? Great judges, whose names we revere and whose opinions have stabilized conditions, are all to be swept away, and every municipality is to be thrown into the maelstrom by constant agitation. What we want is stability, we want justice, we want opportunities for amending wrongs when they approach the point of being visible wrongs and not mere fancies of a frightened imagination. Now, I think that it is time to halt before we surrender that which has made us so great, as you so well said last night, and throw ourselves absolutely into the hands of local self-government. It is secession, to put it in plain terms; a secession on the part of the different municipalities of the state under the pretext of the right of self-government to withdraw from the sovereignty of the commonwealth and destroy that great name "commonwealth" and adapt individual peculiarities and idiosyncracies to the demands of the agitated active minority which always exerts its power because it is noisy, fearless and has nothing whatever to lose. It wrecks stabilized institutions by the violence of its assault. It keeps those on the battlements in a condition of sleepless vigilance until the long period of insomnia in guarding the interests of the people against insidious attacks exhausts the defenders and they fall from exhaustion and at last yield. Now, I am perfectly ready to say that we ought to have

a little more power, some sort of flexibility; but to go to the extent of stripping the commonwealth of its power of sovereignty over cities of every class from the first to the lowest is, in my judgment, a mistake, a fatal mistake, and that if we once step aside from the path which experience has shown us to be the path of safety, of progress, and of advancement as well as of glory, is to darken the whole future of this state, and to set an example to other commonwealths which will lead in time to the breaking up not only of the sovereignty of the state but of the union of indivisible states.

Mr. PEPPER. Mr. Chairman: I think that if Mr. English were here he would desire to make two points before the vote is taken. I think he would say, in the first place, that the proposal here in the report is an entire proposal, and not a severable one. The thought that underlies, as we have all recognized in the debate, is the thought that the form of organization of the municipality is something that should be under the control of the people living within its limits. To give effect to that idea, two different kinds of provisions were reported, one a provision placing a check upon the right of the general assembly to change the form without local consent, and the other the right of initiative, entitling those in the locality to originate and amend them without procuring a change in form of those provisions which concern the initiative. By the action of the committee, it is made impossible for the people to bring about a change in the organization of their municipality excepting in the way that it can be done at present. If that is so, the idea of home rule embodied in this proposed section is to be regarded as repudiated. The retention of the other provision, namely that the legislature is not to be permitted to make change without local consent, covers so small a part of the field which the framer of the section had in mind that I think he would be of the opinion that the action of the Committee in striking out the two last clauses of the section has really emasculated the whole proposal, and all should go. The second point I think he would make is that if you are going to retain home rule to the extent that it is embodied in the first of these subdivisions, that you ought to be consistent and apply it all along the line. It is very difficult to suggest any reason why a city with five hundred thousand people should not have the right to negative legislative action changing the form of organization of the municipality. If you are to concede that right to those communities of a million inhabitants and upwards, and if you are going to make a distinction based upon the size of the population, it seems to me difficult to escape from the thought that the last place to except from legislative control is the great municipality with its great conglomerate mass of citizens, where there is less of a community feeling and less of community conscience, less of a municipal consciousness in these matters than in the smaller and more compact group. So I shall speak as well as I can in his absence and endeavor to give what I understand to be his point of view. First, that Mr. English would be of the opinion that the section has been emasculated by striking out the last two clauses, and the whole thing ought to be rejected; and second, that we ought to make on that point the principle of home rule uniform to all municipal subdivisions; and finally, if you are going to make exceptions that the exception should not be the one that has been singled out by the pending amendment, because that leaves that municipality free from

the overruling action of the legislature which is most likely to be in need of central control.

Mr. GORDON. Mr. Chairman: I would like to say in response to Mr. Carson that if the amendment should be adopted in the manner in which it is now changed by the subsequent amendment, it would make for stability of government, the thing you seem to desire. It would make for stability, because it would hold the present organization of cities, made presumed by the legislature in accordance with the wants of the state at large it would hold that organization free from frequent interruption and change by the general assembly, and would permit the general assembly to submit to so large a section of the state as a first class city a change in its organization and allow that municipality to make that change. Mr. Carson has made an admirable address, and if it touched the elemental principles of government, it would be unanswerable. But we are dealing with municipal corporations. These bodies are created for internal government. They do not touch the rest of the state; they do not touch the basic political principles; they do not touch anything relating to the foundations of a state, but they do relate to the internal government of the corporation, a city. Now in respect to that let me say this. Suppose the Pennsylvania Railroad did not have the stability of its charter, how helpless it would be. Suppose some body parallel to the Pennsylvania legislature would come in and change without the will of the stockholders its internal management at any time, what a sad state that would be. Well now, the city of Philadelphia is exactly in that position. This charter which has been recently given to it did not relate to a thing but internal management. It deals with internal concerns, taxation, public municipal loans, bridges and highways within the city. Literally it is only internal management, the thing which affects the citizen, and that alone the charter of the city covers. Why should not they be freed from the constant changes of the general assembly, legislation from abroad, the interference of people outside the municipality? Those familiar with the Declaration of Independence will recall that in its very initial stages one of the protests was against the laws governing a province created by those thousands of miles away who did not know the internal needs of the province. In this case, Philadelphia now has a charter passed by the legislature. It ought to be allowed to continue that internal government except when the legislature submits to it suggested changes, and then it should be permitted to say whether it desires those suggested changes, because they relate to those citizens and those citizens only. It makes for stability.

On the question recurring,

Will the Committee agree to the amendment as amended?

It was not agreed to.

On the question recurring,

Will the Committee adopt the report?

It was not adopted.

NEW ARTICLE, SECTION 13.

The CHAIRMAN. The next section in order for consideration is section 13 of the proposed new article of the Constitution, the re-

port of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 13. Except as otherwise provided by law in counties containing in whole or in part a city of over five hundred thousand inhabitants, county officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerks of the courts, district attorneys, and such others as may from time to time be established by law; and no sheriff or treasurer shall be eligible for the term next succeeding the one for which he may be elected.

On the question,

Will the Committee adopt the report?

COUNTY OFFICERS.

Mr. PEPPER. Mr. Chairman: The change that is made by this proposal will be noted as contained in the words: "Except as otherwise provided by law in counties containing in whole or in part a city of over five hundred thousand inhabitants." That is to say, that if this section is to prevail, the county officers in Philadelphia and Pittsburgh would be subject to legislative change, whereas in other communities the county officers would be those here specified, and they would continue to be as at present, constitutional officers. The change embodied in the report of the committee is one that would satisfy the desire for change in the law in the case of Philadelphia county and Pittsburgh, but it does not meet the needs of Luzerne and Lackawanna counties. This comes from the committee not in the form of a recommendation, but merely as a report for the consideration of the Committee of the Whole. I feel myself quite strongly that it is a mistake to retain permanently this stereotyped list of county officers in the Constitution, and undertake to modify the list in its application to particular divisions of the commonwealth, and I feel free to offer a substitute for the report of the committee, which I beg to submit.

Mr. CARSON. Mr. Chairman: Before you do that, Mr. Pepper, may I ask a question? I merely ask for information as to whether in this proposed amendment the office of prothonotary becomes a county office in the county of Philadelphia?

Mr. PEPPER. Mr. Chairman: No, sir; it remains as at present, but the legislature would have power either to abolish the office or modify it.

Mr. CARSON. Mr. Chairman: We have in the judiciary article an express provision in regard to Philadelphia, in regard to the prothonotary, which we have yet to consider in our committee as to what we wish to do there, and we do not wish to clamp down on our county a constitutional provision which would prevent the judges from appointing one who is really their own clerk.

Mr. PEPPER. Mr. Chairman: As I read the section it makes no change at all in the status of any county officer at present. It makes it impossible that there should be any change except by constitutional amendment in the case of any kind of municipal division of the commonwealth, excepting in a city of over five hundred thousand inhabitants, and there the change may be made by the legislature. Now the substitute for the report of the committee which I wish to

submit is this: "Until otherwise provided by law county officers shall remain as at present established." The effect, if that were seconded—

Mr. THORPE. Mr. Chairman: I second the substitute.

On the question,

Will the Committee adopt the substitute?

Mr. PEPPER. Mr. Chairman: The effect of that substitute, if established, would be to make no present or precipitate change in the status of county officers but would confer upon the general assembly the right to deal with the subject in legislation from time to time.

The CHAIRMAN. May the Chair suggest the thought that in the preservation of law and order the vital connection between the power of the state government to enforce order in the county is the sheriff. Suppose the sheriff would be abolished by law, where would the central agency of the state, charged with the administration of law and order, delegate its power?

Mr. PEPPER. Mr. Chairman: If it is possible, sir, to answer the question, the answer would be this. If such abolition were to take place, it would take place at the hands of the legislature, the very body most interested in preserving the *nexus* between the central organization and the locality in question. In other words, it seems to me you are entirely safe when you leave in the hands of the central state government acting through its legislature the power to make such changes. I should be opposed to the proposal to leave it to the locality to make the change.

Mr. CARSON. What I mean, Mr. Pepper, is, what would become of the common law powers of the sheriff? Subsisting as they are, they are the vital power, it seems to me, in the maintenance of law and order. His power collected in the *posse comitatus*, his power to do things that we have all found very recently to be so vital.

Mr. PEPPER. Mr. Chairman: Well, sir, perhaps I do not see it as I ought to, but as I see it this resolution would work no change in the powers or duties of the sheriff or any other officer. It would make it possible for the legislature to increase or diminish the duties of the officer, if, indeed, the legislature does not possess that power already. The difference is that it would become possible for the legislature in any of the cases to make a change in the laws of county officers. And if it is thinkable that the legislature should eliminate the sheriff, it is true that this makes it possible to do that thing. I had supposed that it was safe to trust the legislature not to make any such change in our organization, that the real questions that would be discussed would be in relation to the minor offices and not at all to the great office of sheriff, which, as you say, sir, is essential as to the preservation of peace in the community.

Mr. CARSON. Mr. Chairman: And now in that list you include the word "commissioners." We have county commissioners in Philadelphia county. I think most of us agree that their functions may readily be devolved upon someone else, some other officer. I am rather inclined to favor Mr. Pepper's suggestion of leaving it to the legislature, in their good sense, not to disturb an existing officer, so far as the definition of their duties is concerned, under their general jurisdiction, leaving that to rest on the common law, which, after all, has proved the great safety of our jurisprudence; but to embody these officers in the Constitution so that nobody can get at them is to perhaps entrench them in a way that they are really not entitled to.

I do not see why county commissioners should be placed there, or that registers of wills ought to be placed there, or clerks of the orphans' court, that perform ministerial duties. Even the office of coroner has sometimes been considered as an unnecessary one, as a physician connected with the department of health might just as well discharge those duties. In regard to prothonotaries, to put the court officer who is really the instrument and representative of the court in the custody of its records out of the pale of regulation of restraint or control of the judges themselves seems to me unreasonable in simply multiplying the number of officers for popular election in order to keep alive the interest for electing officers in the fall. Now I do not think that Mr. Pepper's suggested amendment makes a dangerous attack on any existing officer, until changed by the legislature itself. I am always trying to think of the legislature as a representative body. It is our system. Why should we get away from the system of representation? We are responsible for the representatives we send to the legislature, and we speak through them, and act through them, and we are not departing from any democratic doctrine in so regarding them. I cling to the doctrine of representative government. It has been tried in the fire, and therefore it is worth something, and therefore I do not think it at all wise to put these officers selected as a class out of the power of the people's representatives to control, if experience should illustrate the necessity to have some such interference. I would be in favor of voting for Mr. Pepper's amendment to the Constitution.

Mr. FOX. Mr. Chairman: May I ask Mr. Pepper what the effect of his substitute would be on the last clause of section 13: "No sheriff or treasurer shall be eligible for the term next succeeding the one for which he may be elected."

Mr. PEPPER. Mr. Chairman: My answer is that if section 13 were to be stricken out of the Constitution, as would be the case if the suggested substitute were to prevail, the restriction on the eligibility of the sheriff and the treasurer would fall with it, and it would be necessary for the restriction to be reinstated by act of assembly.

Mr. FOX. Mr. Chairman: That was my conception of it, sir. Do you think that is wise?

Mr. PEPPER. Mr. Chairman: I should think, sir, that the policy of making sheriffs and treasurers ineligible for re-election is one which is so generally recognized that the legislature of the commonwealth would be likely to reflect that policy. In other words, it seems to me that if you are of opinion that the whole subject of dealing with county officers should be left with the general assembly, that particular feature of the administrative system constitutes no reason for changing your mind. On the other hand, if you are of the opinion that the county officers should be embedded in the Constitution then I think that particular provision should be one that ought to stay in with the rest.

On the question recurring,

Will the Committee adopt the substitute?

It was not adopted.

On the question recurring,

Will the Committee adopt the report?

Mr. STACKPOLE. Mr. Chairman: I move that the provision of

the present Constitution, section 1 of article XIV, be substituted for the report of the Committee.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

NEW ARTICLE, SECTION 14.

The CHAIRMAN. The next section in order for consideration is section 14 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 14. Except as otherwise provided by law, in counties containing in whole or in part over five hundred thousand inhabitants, three county commissioners and three county auditors shall be elected in each county where such officers are chosen in the year one thousand nine hundred and twenty-three, one for two years; and two for four years; and every two years thereafter one and two alternately for four years; and in the election of said officers each qualified elector shall vote for one persons; any casual vacancy in the office of county commissioner or county auditor shall be filled by the court of common pleas of the county in which said vacancy shall occur, by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled.

On the question,

Will the Committee adopt the report?

COUNTY COMMISSIONERS AND COUNTY AUDITORS.

The CHAIRMAN. The Chair desires to call attention to the fact that there must be something left out of this section. "Except as otherwise provided by law, in counties containing in whole or in part over five hundred thousand inhabitants, three county commissioners and three county auditors, * * * ." There must be some omission I suppose it was intended to read as the preceding section reads, "Except as otherwise provided by law, in counties containing in whole or in part a city of over five hundred thousand inhabitants, county officers shall consist, * * * ."

Mr. STACKPOLE. Mr. Chairman: I move to amend by substituting section 7 of article XIV of the present Constitution for the report of the committee.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

NEW ARTICLE, SECTION 15.

The CHAIRMAN. The next section in order for consideration is section 15 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows:

The Secretary read the proposed section as follows:

Section 15. Subject to the provisions of this constitution and of general law, all municipalities shall have powers of local government and corporate action adequate for municipal purposes, and no such power shall be presumed to be denied by reason of not being specified in any existing law.

On the question,

Will the Committee adopt the report?

MUNICIPAL POWERS.

Mr. PEPPER. Mr. Chairman: This section has the effect, if adopted, of changing the presumption as to the existence of a corporate power instead of its being necessary to adduce from the municipal charter the existence of its powers, because it is there written in express words, or comes by necessary implication. The municipality under this view would have all the power of a municipal corporation except to the extent that they are limited by legislative or constitutional provisions. It is an expression of the thought of those who are struggling all the while for increasing the field and scope of municipal action. The language here employed is the language which has been proposed in the case of the amendment of the Illinois Constitution which is to be acted upon shortly. I think it was framed by Mr. Ernest Freund, who is connected with the University of Chicago, who is an accomplished student of the law on municipal corporations and political science. The section is brought before the Committee of the Whole not with an affirmative recommendation of the committee, but merely that the question may receive proper consideration.

The CHAIRMAN. The Chair happens to be the solicitor for some first class townships and a definition of the powers of first class townships made by the courts holds very strictly to the other rule. It would seem in the construction placed on the municipal division that it ought to be so held. It would mean a revolution so far as first class townships are concerned.

Mr. CARSON. Mr. Pepper, did Mr. Freund give any illustrations of conditions to which this thing has been applied in the past indicating the necessity for some such provision? Has he suggested in any way why this suggested provision has been found necessary? I mean is this a provision to give municipalities, who feel some how or other that they have been too closely confined, powers which were necessary to their well-being? It may be a very wise provision. Does it in any way approach the territory which was suggested by the article which we struck out, section 12?

Mr. PEPPER. Mr. Chairman: I should think not. It seems to me that the section that we struck out had to do with corporate organization. This has to do with the exercise of corporate powers. My recollection is that there are two great doctrines of corporate power, the doctrine of special capacity that a corporation has only those powers that are conferred upon it. And the other is the doctrine of general capacity that a corporation has all the powers of a natural person except as restrained by statutory or constitutional limitations.

Mr. CARSON. How would a judge interpret this provision?

Mr. PEPPER. Mr. Chairman: My thought is that if such a section was embodied in the Constitution the act of a municipal legislature in an ordinance of council would be regarded as in the sphere of power of the municipality unless that ordinance should be regarded as invalid under the provisions of the statute law or the Constitution of the state. In other words it is the difference between adducing the existence of the power either from an expressed or im-

plied grant and recognizing the inherent existence of the power in the people of the municipality speaking through their municipal legislature unless the state has restrained them.

Mr. CARSON. Mr. Chairman: Have the judges ever denied a doctrine of that kind?

Mr. PEPPER. Mr. Chairman: Yes, I think they have, sir. As the Chairman has said, perhaps the most rigorous insistence has been founded upon the idea that the corporate power to exist at all must be adduceable from the language of a grant, as in the case of municipal corporations, and especially in the class of municipal corporations to which the Chairman has referred. This undoubtedly does change the point of view. It is a concession to the thought of those who say that the power of citizens, resident in a particular municipal division, are powers which they should have a right to express in local legislation without limitation of any kind and not as the result of any specific grant of power from anybody except in so far as they are restrained by organic law or act of assembly. It is the new thought on the subject of the nature of a municipal corporation, not so much an agency of the state deducing its power from the grant of a charter as it is a group of citizens endowed with the inalienable right of local self-government except to the extent that by a general act they are restrained by central restrictions.

Mr. CARSON. Is it in the Constitution of Illinois alone that this feature appears and no where else?

Mr. PEPPER. No. There are a number of constitutions in which approximately the same feature is found. Dr. Thorpe here who has most of the constitutions on his desk, all of them in his head, has just called my attention to the Constitution of Ohio in which there is a provisional measure like this, somewhat different in phraseology, but it expresses the same thought.

It is a measure which has been presented here for your consideration as one that is pending for adoption or rejection in Illinois. It has not yet been acted upon.

Mr. FISHER. Mr. Chairman: Is the effect of this proposed section to place into the hands of the municipalities all the power of state government which is not expressly appropriated by the state through its Constitution or its laws?

Mr. PEPPER. It would have the effect, Senator Fisher, as I apprehend of recognizing the power of a municipal legislature to pass an ordinance upon any subject affecting the municipality, which ordinance when passed would be a valid and enforceable ordinance unless the court would point to an inconsistency between that ordinance and the fundamental law or an existing act of assembly.

Mr. FISHER. In other words the construction is to the effect that the sovereignty of the state is surrendered to the municipality, unless expressly appropriated by the Constitution and laws?

Mr. PEPPER. Well, Mr. Chairman, it is a question of point of view. It is either from the central point of view a surrender to the municipality the right now resident in the state, or from the local point of view it is a strong assertion that the local right of self-government has been surrendered to the central authority only to the extent that the central authority sees fit to use it.

Mr. FOX. Mr. Chairman: It seems to me that the inquiry made by former Attorney General Carson a few moments ago is a very per-

minent one, and that this section is even more dangerous and objectionable than the section we have just voted down, section 12. The provision is that municipalities shall have power of local government and corporate action adequate for municipal purposes. It has not even the restriction that however they may choose to change their local government, if they see fit to change the organization of the government, would be subject to the legislature. I think that it would be most unwise to adopt this section and I hope the motion will not prevail.

The CHAIRMAN. Just for the information of the members, the Chair would state that he has advised boroughs and townships for which he is solicitor that we look into the charter and the law to see whether the power is conferred. It is my understanding of the law that a municipality has no other powers and it seems to me that it ought not to have. For instance, I have a case now, in the passage of ordinances that are really criminal law, a very small municipality or township could make things a crime that ought not be permitted to be a crime. The rule is, as I recall it, that the legislative function has only been limitedly conferred upon townships of the first class, fundamentally does not exist at all in townships of the second class; they have no legislative function, and it is only limitedly conferred as to boroughs. The power that is to be exercised is always confined to the charter or law creating them. That is as I understand it.

Mr. PEPPER. Mr. Chairman: That is the point. In other words, it brings us back to the old question of limited corporate powers under the law of *ultra vires*. If we adopt this declaration, then there could be no such thing as municipal ordinances or *ultra vires*. The municipal ordinance would be a free exercise of municipal power and if the ordinance were invalid the invalidity would not result from a lack of power, but from the presence of the constitutional or statutory provision, expressed or implied. It is in the memory of all of us that it was said by a great chief justice of Pennsylvania, there is no such thing as a doubtful corporate power; show me the case of a charter which confers a doubtful power and I will show you the case of a charter which confers no power. In other words, power has to be clear or it does not exist when you are construing public grants. Now this reverses that rule and lets the municipality have the benefit of the doubt in any case where the validity of an ordinance is at issue.

On the question,

Will the Committee adopt the report?

It was not adopted.

NEW ARTICLE, SECTION 16.

The CHAIRMAN. The next section in order for consideration is section 16 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 16. A municipality shall have exclusive power to regulate the rates to be charged and the services to be rendered, through the operation of any public service facility built or purchased by it, so long as the title to such facility is retained by the municipality.

On the question,
Will the Committee adopt the report?

MUNICIPAL REGULATION OF RATES.

Mr. PEPPER. Mr. Chairman: I report this at the request of the committee. I feel at liberty to express my own unutterable dissent from the proposition as it is embodied in this resolution. As I understand it, the power of regulating public service, the power of regulating the rates to be charged for service rendered by any public utility, is the police power of the state. I have been taught to believe that the police power is an inalienable power of sovereignty. I can not think for myself of the state of Pennsylvania stripped of its police power either generally or for limited purposes. This proposal is a proposal that the state of Pennsylvania should confer upon a municipal corporation the police power resident in the state, and thereby disable itself, the state, from exercising the power in question. It seems to me a definite and concrete proposal that the power to regulate rates and service in the case for example of a subway or an elevated railway of any great municipal utility, the power to regulate rates and service should be vested in the municipality and its agencies to the exclusion of the regulating right of the commonwealth. That, it seems to me as I have said, is contrary to fundamental principle. I do not think that by constitutional enactment we should ever deprive the state either generally or for limited purposes of its police power, which may express itself in the regulation of public service. I venture to hope that while I am reporting the section for the consideration of the Committee of the Whole, the judgment of the Committee of the Whole will be adverse to its adoption.

On the question recurring,
Will the Committee adopt the report?
It was not adopted.

NEW ARTICLE, SECTION 17.

The CHAIRMAN. The next section in order for consideration is section 17 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 17. No street passenger railway shall be constructed within the limits of any city, borough or township, without the consent of its local authorities; provided, that nothing in this provision shall be construed as to restrict the police power of the state over the operation of public utilities.

On the question,
Will the Committee adopt the report?

CONSTRUCTION OF PASSENGER RAILWAYS IN MUNICIPALITIES.

Mr. PEPPER. Mr. Chairman: I think that the meaning might be made still clearer if the language were modified thus: "Provided, that nothing in this constitution shall be so construed as to restrict the police power of the state over the operation of public utilities."

I am as much in favor of the adoption of this provision as I was

opposed to the other. It seems to me that this is reciprocal and ought to be made a complete and definite statement as to the existence of the central power of control in matters affecting public service.

The CHAIRMAN. The report will be considered as amended in the respect in which Mr. Pepper has indicated. The Chair understands that the words in this section, excepting those inserted, are the precise words of the present Constitution.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

NEW ARTICLE, SECTION 18.

The CHAIRMAN. The next section in order for consideration is section 18 of the proposed new article of the Constitution, the report of the special committee on local government, being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 18. All municipalities shall have the power by ordinance to assess the cost of a municipal improvement against property specially benefited thereby, irrespective of the relative locations of the said improvement and property; provided, that such assessment, whether made payment in one or several installments, shall not exceed the increase in salable value due to such improvement. The method of ascertaining such assessment may be regulated by law.

On the question,

Will the Committee adopt the report?

ASSESSMENTS FOR PUBLIC IMPROVEMENTS.

The CHAIRMAN. May the Chair offer a suggestion? At the last session of the legislature there was an act passed which limited the act of 1901 and all other acts providing for the assessment of the cost of public improvements, and limited them as I recall it in this main respect that under the act of 1901, and another act which followed, it may be 1905, an assessing ordinance was passed particularly in boroughs. The new provision of the law was that the assessment can only be made as the result of the report of a jury of view. In the community in which I live the effect of that has been the blocking of public improvements because the municipality was afraid to make a great public improvement like the building of a great sewer system and have the question of its cost assessed by a jury of view. As this is a very technical question, a question of the assessment of the cost of municipal improvement, and Mr. English and Mr. Connelly have had great experience with it, it would seem that it might be well to let this section go over until we see what the point of view of these experts on that question is.

Mr. PEPPER. Mr. Chairman: I hope the Chair's suggestion will prevail, and before the section is passed I would like to suggest on behalf of the committee that the section might be perfected somewhat so as to make its meaning more clear, if the following changes were made: Insert after the words "to assess" in the second line the words "a part or all of," so that the section would read "All municipalities shall have the power by ordinance to assess all or part of the cost of a municipal improvement." Then insert after the words "salable value due to such improvement" the following: "during the

interval of one year previous to the authorization of the improvement, and the fifth year following the completion of the improvement." Those suggestions came to me from Director Twining, director of transportation in Philadelphia, who has given a great deal of thought to this subject, and he is strongly in favor of some such enactment as this, but he is of the opinion that a period of time sufficient for determining the fixed value, or increase of value, should be specified and that the assessments should not take place upon the basis of some seeming sudden increase of value which might turn out from the facts not to be permanent.

Mr. CARSON. Mr. Chairman: What are the exact words suggested?

Mr. PEPPER. Mr. Chairman: "During the interval of one year previous to authorization of the improvement, and five years following the completion of the improvement." I merely make those suggestions now in order, if the Chair approves, that it be incorporated in the report of the committee.

Mr. McCORMICK. Mr. Chairman: Does the language of this section make it possible to assess the cost upon every property in the city?

The CHAIRMAN. It looks so to me.

Mr. McCORMICK. Mr. Chairman: Is it possible to determine a fair salable value?

The CHAIRMAN. I tried a good many cases and I argued both ways. I think this opens very wide the door and is a very interesting question.

Mr. PEPPER. Mr. Chairman: In order that the gentlemen in the interval may think it over at their leisure, let me say that the thought of the draftsman is, as I understand it, twofold. First that there is a provision enabling an authoritative taking by the law of eminent domain, to take more than is actually needed—

The CHAIRMAN. That is the next section.

Mr. PEPPER. Mr. Chairman: I withdraw what I said on that point. But I think the question immediately under consideration is to relieve the present strict rule which limits the right of assessment to an abutting property, a property physically connected in some way or geographically in some way with the improvement under consideration. This is an attempt, whether a successful one or not the committee will decide, to break down so rigorous and seemingly so artificial a rule as that there must be actual abutment or contiguity as the test of the right to assess, and the real test should be the effect in view of the improvement. I point out that it is neither more nor less a difficulty to determine the fair salable value of the property in one case than in the other. It is just as hard to determine the value where it is an abutting property as to determine where it is not.

Mr. FISHER. Mr. Chairman: It seems to me this provision is open to serious objection. It opens the way to incidental damages without limitation. That is the first. The second is that it makes

the lawmaking power of the municipality the judge of the amount of damages and enables them through the ordinance to fix the assessment.

The CHAIRMAN. That is the way it was prior to the act of 1919. It was that way prior to the act of 1919 as to boroughs.

Mr. FISHER. Mr. Chairman: But prior to that in the case of the appropriation of property, was there not an appeal to the court in case of dispute?

The CHAIRMAN. There could be an appeal to the court, but the assessment in the first instance, in boroughs and cities of the third class, is by council as benefits in an assessing ordinance.

Mr. FISHER. That was not the case in boroughs with which I had experience. There were appraisers appointed by the court who went upon the property and took into consideration the benefits and injuries and then struck a balance as to whether there were benefits or damages. If there was damage an award was made to the property owner. If there was a benefit an assessment could be made.

Mr. CHAIRMAN. That is the way it was previous to the act of 1919, which restored the system that existed before 1905 or 1901, whichever it was. But that system had its drawbacks.

Mr. FISHER. Mr. Chairman: Yes, the property owners had no right of appeal to the court. They were subject to the arbitrary rule of the ordinance making body.

The CHAIRMAN. It has that effect, I tried some cases under it. On the question recurring,

Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: I move that the section together with the amendment be recommitted to the committee for reconsideration.

The CHAIRMAN. If I might offer the suggestion I think it is unwise at this stage to send things back to the committee. We want to get our work completed entirely.

SECTION 18 OF NEW ARTICLE POSTPONED.

Mr. PEPPER. Mr. Chairman: I move that further consideration of this section be postponed for the present.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

It was agreed to.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress.

ADJOURNMENT.

Mr. FISHER. Mr. Chairman: I move that the Commission do now adjourn until 11.30 o'clock Tuesday morning, February 3, 1920.

Mr. CARSON. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 12.30 o'clock P. M., the Commission adjourned until 11.30 o'clock Tuesday morning, February 3, 1920.

Senate Chamber,

Tuesday, February 3, 1920.

The Commission met at 11.30 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—18.

Alter, Carson, Connelly, English, Fisher, Gordon, McCormick, Miller, Munce, Pepper, Perrine, Reed, Smith, Stackpole, Thorpe, Voll, Warburton, Schaffer (Chairman).

ABSENT—6.

Cuyler, Fox, Kelly, Pinchot, Salzberger, Tyson.

The CHAIRMAN. A quorum of the Commission being present, the Commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mrs. WARBURTON. Mr. Chairman: I second the motion.

The motion was agreed to.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports from committees at this time?

Has Committee No. 1 anything to report?

Mr. ALTER. Mr. Chairman: Committee No. 1 has nothing to report.

The CHAIRMAN. Has Committee No. 2 anything to report?

Mr. CARSON. Mr. Chairman: Committee No. 2 has nothing to report at the present time.

The CHAIRMAN. Has Committee No. 3 anything to report?

Mr. THORPE. Mr. Chairman: Committee No. 3 has nothing to report.

The CHAIRMAN. Has Committee No. 4 anything to report?

Mr. PEPPER. Mr. Chairman: Committee No. 4 has nothing to report.

The CHAIRMAN. Has Committee No. 5 anything to report?

Mr. SMITH. Mr. Chairman: Committee No. 5 has nothing to report.

The CHAIRMAN. Has any special committee anything to report, or has any member of the Commission anything to bring before the Commission at this time? If not, if there is no objection, the Commission will resolve itself into the Committee of the Whole for the purpose of proceeding with the calendar.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

BUDGET AMENDMENT.

Mr. REED. Mr. Chairman: Mr. Pinchot has sent to me a proposed amendment to the budget, part of section 15, I think it is, and asked me to present it for him.

The CHAIRMAN. Judge Reed presents a proposed amendment to section 15 coming from Mr. Pinchot, amendments to the budget, which will be read by the Secretary.

The Secretary read the proposed amendments as follows:

On or before February 15 of each odd-numbered year the Governor shall submit to the general assembly a budget. The budget shall contain a statement of proposed appropriations and estimated revenues for the two fiscal years next ensuing, including appropriations for charitable, educational and benevolent purposes. The Governor shall, at the time of presenting the budget to the general assembly, submit a bill containing the proposed appropriations for the fiscal years covered by said budget, as well as any bill or bills embodying such recommendations as he may desire to make as to sources of revenue. No appropriations for charitable, educational or benevolent purposes to corporations and associations not wholly under state control shall be made by the general assembly except as budget items. The Governor, in the budget, may not insert any item for the benefit of any such corporation or association, but shall either specify the amount of appropriation proposed in the case of each class of beneficiaries, or may include the aggregate of all such appropriations in a single item. In either case, he shall submit a plan for distributing the item among classes of beneficiaries according to a schedule based upon the relative importance of said classes and among beneficiaries within each class according to the relative amount of value of service rendered, and relative conformity to standards of excellence and the plan shall include rules for measuring service and fixing standards. Such rules shall apply equally and uniformly to all beneficiaries of the same class.

Immediately upon receipt of the Governor's budget, the presiding officer of the House of Representatives shall introduce in such House the said appropriation bill and also all bills relating to sources of revenue submitted by the Governor.

The general assembly shall have power to decrease, strike out or otherwise alter any item in the appropriation bill: provided, that in the case of items of appropriations for charities, educational and benevolent purposes the general assembly may not change the application of his plan to particular beneficiaries, but may modify the Governor's plan as a whole; provided, that the general assembly may not make a specific appropriation to a specific beneficiary. Until the appropriation bill shall have been finally acted upon by both Houses of the general assembly, neither House shall consider any appropriation measure, unless the same shall be solely for the immediate needs of the general assembly, or shall have been submitted to the general assembly by the Governor with the request that it be acted upon in advance of the appropriation bill.

The final adjournment of the general assembly shall not take place until a period of ten days shall have elapsed after the appropriation bill shall have been finally acted upon by both Houses of the general assembly and shall have been presented to the Governor.

The CHAIRMAN. This, of course, would have to come as a substitute for the report of the committee, because there is a report of the committee.

Mr. REED. Mr. Chairman: It is somewhat embarrassing to me, because this information is contained in his letter sent to me. It is intended to prevent any appropriation to a private institution. I

would very greatly appreciate your putting it before the Commission. It is possible he did not have this report of the committee when he wrote that, but I had the duty to perform and I have performed it.

The CHAIRMAN. There is nothing before the Committee except the report of the committee unless that is offered as a substitute and seconded.

Mr. REED. Mr. Chairman: I move that that be substituted for the report of the committee.

Mr. McCORMICK. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

The CHAIRMAN. The date here has been fixed as February 15th. There is one objection to it. It does not seem to the Chair that it would be humanly possible for his doing the things contemplated by this substitute between the time of his going into office and February 15th, the first year that the Governor takes office.

Mr. REED. Mr. Chairman: I only presented it, I say, because I was asked to; and in the second place I thought possibly the gentlemen who had been working on this section last week might see somewhere in it the germ of a suggestion to add to their report.

Mr. CONNELLY. Mr. Chairman: Has the committee reported on this matter?

The CHAIRMAN. The committee has reported on it as section 13, as it is on the calendar.

Mr. PEPPER. Mr. Chairman: Would it be in order to move that consideration of the substitute which is introduced be postponed until after action is taken on the report of the committee?

The CHAIRMAN. If action on the report of the committee is taken that would be action of the Committee of the Whole, and this cannot be offered as a substitute.

Mr. PEPPER. Mr. Chairman: My thought was sir, that anything that is in the substitute can be availed of during the course of the debate and if the report of the committee is defeated then this can be brought up. If the report of the committee is adopted we could not consider the other.

The CHAIRMAN. It seems to the Chair that the substitute, as a substitute, would have to be voted upon first. Then anything that is in the substitute that may be desirable to be incorporated in the report of the committee as amended can be incorporated in the report of the committee in that way.

Mr. ALTER. Mr. Chairman: The section as reported by the committee is substantially the section which was introduced by Senator Fisher. I would like to have Senator Fisher present when the discussion is gone into, either as to the substitute, or as to the section reported by the committee. I understand he is in town and will be here shortly. I would ask, therefore, that the committee proceed with some of the following sections and defer consideration of this matter until Senator Fisher is present.

The CHAIRMAN. If there is no objection, further consideration of this section will be postponed until the arrival of Senator Fisher,

who is at a hearing in my office, and until the section is reached in its order on the calendar.

NEW ARTICLE, SECTION 5.

The CHAIRMAN. The next section in order for consideration is section 5 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 5. The general assembly may provide for the creation of classes of incorporated districts wholly or partly within the boundaries of one or more municipalities and may vest in such incorporated districts one or more of the powers already exercised by the municipalities within their respective boundaries or additional powers, and may make any power so vested an exclusive power of the incorporated district or a power concurrent with the municipalities wholly or partly within their respective boundaries; provided, that no such incorporated district shall be created or its boundaries extended or its powers increased except by the consent of at least a majority of such electors resident within the proposed boundaries of the incorporated district as shall vote on the question at an election which shall be held as may be provided by law.

On the question,

Will the Committee adopt the report?

INCORPORATED DISTRICTS.

Mr. CONNELLY. Mr. Chairman: As I understand this section, it allows incorporated districts an opportunity of creating other districts, at Philadelphia, for instance, as I understand this section—it would allow in Philadelphia the creating of any number of districts and would take away from the present constituted municipal authorities the powers which had been delegated to them. Now, I bring that matter up, whether that is a wise provision at this time to make, in view of the general discussion that is bound to take place here, as to certain interference, so far as the municipality is concerned. I recognize the thought as expressed in this section, that this is not to be imposed upon that district except by the vote of the people. That, too, has its objection, so far as some municipalities are concerned, inasmuch as it means a special election—I am talking now just for the sake of giving my viewpoints so far as Philadelphia life is concerned—an expenditure, if it were a special election, of a hundred thousand dollars or more, but it seems to me that this section is not clear from any standpoint because in times of political stress if there should be a controlling factor in the legislature and if there should be certain adverse elements, so far as my argument is concerned, in narrowing that viewpoint of Philadelphia, that they could take away from the present mayor of Philadelphia the police power and delegate it to somebody else and then have a special election to carry it out through any machinery. I do not believe that that is correct in the light of modern thought inasmuch as I believe that all power in a municipality ought to belong entirely to that corporate power, and there should not be the incorporation of incorporated districts to take away under the guise of a rider, which may be sanctioned, of course, by the people to carry that purpose into effect, to disrupt a municipal government. That is what this finally leads to. It can take away the police power of Philadelphia. It can take away certain powers in the

department of public works. It can take away certain powers which are now given under the act of 1857, or 1867, whichever it is, that gives to Fairmount Park the control over its thoroughfares. It can take certain other powers away, and then create, what seems to me to be one thing that ought not to be created today, the creation of commissions running parallel with municipal government, and functions that properly belong to that government. Now, I am dealing with it from a practical standpoint. I am taking it from the basis that I recognize that this thought is intended to cover certain situations throughout the commonwealth. I am willing to help upon that. But certainly as a Philadelphian, I cannot vote for any proposition that allows in any incorporated district the taking away of the powers of the constituted municipal authorities and vesting them in a commission that might, politically or otherwise, be diametrically opposed to the best principles of city government.

Now, that is what this means and I think it my duty to call this matter to your attention. It is creating commissions within commissions. It is taking away powers that belong to municipal governments. At this moment I was going to ask permission of the Chair to allow this matter to lie over until the end of the calendar. I would rather discuss some of the questions that were voted upon by this Commission and further elaborate this thought, but if you allow this to be done then, of course, you could not subsequently go along so far as home rule of municipalities is concerned. I do not know how it is going to work out practically. I would be opposed, Mr. Chairman, to this section, in view of the thought expressed as to what it practically means so far as Philadelphia is concerned. When I say Philadelphia, I am only using Philadelphia as an illustration of my thought. I do not want to be placed in the position of speaking here as a Philadelphian against the best interests of any other part of the commonwealth of Pennsylvania. I only use that as an illustration of my thought.

Mr. REED. Mr. Chairman: I think this section grew out of a letter that was written to our committee by some engineers, suggesting that there ought to be powers in the legislature to create districts for certain specific improvements. What they had in mind was that the floods of the Allegheny and Monongahela rivers, which affect Pittsburgh every once in a while, could be controlled by a system of improvements which no single municipality could bear, because it necessarily goes outside of their limits, and in the case of the Allegheny river they had a very comprehensive scheme involving the erection of reservoirs and various flood walls, and all that sort of thing, which would be a much larger expense than any single municipality could contemplate, because, as I say, they would have to go forty or fifty miles up the river to build those reservoirs. Now, from that somebody has evolved this, to me, very treacherous provision.

Mr. CONNELLY. Mr. Chairman: I might say that I have in mind exactly what Judge Reed has suggested, because some of the gentlemen from Pittsburgh have already discussed the matter, and I intended to discuss it with Mr. Alter. I do not believe that it in any way helps the people that you have just spoken of, and it seems to be too narrow in its application. What I had in mind—and I must express my apologies for being sick, and I did not give my attention to the committee when this matter was originally discussed. We dis-

cussed this matter with one of the men connected with the Department of Internal Affairs, who was formerly a Philadelphian, and we took his language which I am only presenting as a general proposition, and which is not quite complete, except that commissions to be known as city planning commissions may be created, the boundaries of their jurisdiction established, and expenses provided for and their powers and duties prescribed, to secure co-ordinated comprehensive plans of highways and roads, parks and parkways and all other means or systems of communication, land sub-division, water supply, sewage and sewage disposal, collection and disposal of garbage, housing, sanitation and other public improvements where the exercise of such powers and duties is not otherwise provided for by law. That leaves to the general assembly the power to provide for these things, and with certain changes of language would meet the situation which Judge Reed speaks of and which the gentleman from Philadelphia discussed and thinks would meet their situation by using certain words in relation to river rights, and so on.

Mr. ENGLISH. Mr. Chairman: I think it would be very unfortunate if we were entirely to lose sight of the important principles involved in this section. The local situation, as I understand it, in Pennsylvania, with regard to commissions of this character is something like this. The legislature has had absolute jurisdiction and control over the creation of the powers, the duties, and the boundaries of municipalities. Probably the legislature might have the power to create and define such commissions as we have in mind, when we think of this section, but in view of the presence in the Constitution of section 20 of article III, which prohibits the delegation of any municipal power or function to a special commission, there is some doubt as to the power of a legislature in the premises; and therefore this section is recommended. The thought is something like this: In the development of the community life of Pennsylvania it happens that municipal boundary lines are not strictly followed, so that you may have a community which extends in substance through perhaps ten or a dozen communities which substantially are one, and which have in common a great many problems. It might be desirable to establish and maintain a uniform park system through all of these municipalities, a system of parks in which all would be interested, and which would be beneficial alike to the people of all of them. It would be entirely possible to establish a single drainage system for more than one municipality at their joint cost for the benefit of all. In Massachusetts there is a metropolitan district around the city of Boston, a municipality which has jurisdiction over something like twenty-eight separate and distinct municipalities, and which has had delegated to it (taking away, necessarily, from all of the municipalities) certain municipal functions. And that is the thought behind this section. It may be that there are some dangers incidental to the application of it to practical life due perhaps to the manner in which it is drawn. It may be objectionable, as my friend from Philadelphia suggests, to take wholly from within a single municipality the control of certain municipal functions, but that in no way detracts from what seems to me to be the substantial merit of the section. There are certain metropolitan problems to be found in every metropolitan community which are not confined arbitrarily within the fixed boundary lines of municipalities, and it is in order

to enable the legislature to provide a remedy beyond doubt for a situation such as I have described that this section is recommended. Possibly it might be desirable to so redraft it as to relieve the apprehensions of those who fear that the legislature might run amuck and take out of the municipality certain functions that it ought to have. Personally, I do not entertain such apprehensions. I have some confidence in the wisdom of the legislature. I feel that they are generally responsive to the wishes of the people, and that you are not likely to find at any time in the legislature in the future a situation where the representatives of the people here at Harrisburg will arbitrarily and without reason take away from any municipality or any class of municipalities functions that properly should be kept within the control of representatives of the people who live within that municipality. On the other hand, it might be found desirable to create a special commission within a municipality for the discharge of certain functions, taking care of parks, playgrounds, and any number of municipal powers that can best be administered through a commission of that kind. It seems to me that the section amply protects the situation from abuse in that it reserves to the people in the community affected the right to veto any such proposition.

Mr. REED. Mr. Chairman: In our committee we have drawn up a provision which was plain and intended to meet the situation presented by these Pittsburgh engineers. I do not have a copy of the amendment because we dropped it and let Committee No. 5 have it as part of their municipal consideration. But, in substance, it was that the general assembly may by general laws provide for the creation of taxing districts to facilitate improvements therein, and our idea was, if the legislature saw fit to do it, that they could create a taxing district for the city of Pittsburgh and various boroughs up the Allegheny river, using that as an illustration, and calling that a taxing district and imposing a tax for those particular improvements in some constitutional way, and have the improvements carried out by a commission. But the vice of this to me, of this provision that is now before the Committee, is the statement that it may then vest in such incorporated districts one or more powers already exercised by the municipality within the respective boundaries. That is not what we were considering at all. We were undertaking to create a district that could exercise a power which was not vested in any particular municipality at this time.

Mr. ALTER. Mr. Chairman: I concur in the views of the gentleman from Philadelphia, Mr. Connelly, as to the dangers which seem to lie in the section as it is upon the calendar. I have had some conversation from time to time with the gentlemen from the western part of the state who are anxious to have the legislature empowered to make some provision for the problems which Judge Reed has referred to; and as a substitute for the section as it is upon the calendar, which would provide for the problems these gentlemen from the western part of the state have in mind, and at the same time probably provide for such community matters as may be desirable, as indicated by the gentleman from Erie, I would like

to offer for the consideration of the Committee this section as a substitute for the section upon the calendar, if the Secretary will be good enough to read it.

The CHAIRMAN. The Secretary will read the substitute proposed by Mr. Alter.

The substitute was read by the Secretary as follows:

The general assembly may provide for the creation of classes of incorporated districts wholly or partly within the boundaries of one or more municipalities, and may vest in such incorporated districts the power to provide for the regulation, the flow of streams, flood control, water transportation, water supply and development of water power, sewage disposal, sanitation, parks and any other conservation and development of the natural resources of the commonwealth; provided, that no such incorporated district shall be created or its boundaries extended except by the consent of the electors resident within the territory of the proposed boundaries of the incorporated district who shall vote on the question at an election that may be held as provided by law; provided further, that no incorporated district shall be created entirely within the boundaries of a city or borough.

Mr. CARSON. Mr. Chairman: I second the substitute.

On the question,

Will the Committee adopt the substitute?

Mr. REED. Mr. Chairman: I would like to ask if that requires the unanimous consent of the electors or whether it does not mean the consent of the majority.

Mr. ALTER. Mr. Chairman: It is intended to mean the consent of the majority.

The CHAIRMAN. The Chair would like to call the attention of the Committee to the matter of county lines. County lines it would seem ought to be considered in connection with such a provision, either as a substitute or as the section is reported by the committee. There are around Philadelphia, in Delaware county and in Bucks county, municipalities of various kinds, boroughs and townships. Some boroughs will become cities and townships of the first class. This will form *imperium in imperio* in that territory and there would be a most terrible confusion it seems to me. How would you work out problems where county lines are not considered?

Mr. PEPPER. Mr. Chairman: I should like to inquire of Mr. Alter through you whether in his opinion a grant of power which the substitute contemplates is adequate to authorize the general assembly to confer the taxing power upon an incorporated district. As I understand it these taxing districts, as they are called in other states, exist primarily for the purpose of raising by local taxation funds for public improvements within the limits of the district, such as the reclamation of a flooded area, and then by assessing the resulting benefits upon the property that is improved by the process reconp the district to a large extent for the expenditure. There are also bonds in many of these districts in other states, in Ohio, I think, and in various places along the Mississippi river where levees have to be built and like public improvements on a large scale, where bond capital is needed. I wanted to inquire whether this grant of a power to regulate the flow of streams and the other things that are specified would carry with it by proper implication the power to tax and the power to borrow money and the power to assess benefits against property. It seems to me that those things ought to be in the grant of power if those districts are to function. It was not

clear to my mind that the power to regulate was sufficient to cover the contingencies.

Mr. ALTER. Mr. Chairman: I have no thought particularly as to that part of the section. It does not originate with me, but merely embodies the thoughts of the gentlemen to whom I have referred, who are anxious to get something which will permit particularly the control of the flood water reservoirs of the western part of the state. I would think that the taxing power at least would be necessarily implied in the section as it has been submitted. Otherwise, the districts would be helpless. Whether it would be implied that they have power to issue bonds and borrow money I do not know. The right to assess benefits is scarcely a thing that would be implied without some express-provision. But the section which I have submitted as a substitute, Mr. Chairman, is intended by me merely as a suggestion and not as a result of any very elaborate thought upon my part.

Mr. REED. Mr. Chairman: I would like to suggest to the gentleman that this power be confined to necessities and that he strike out the word "parks." I do not want to be dispossessed of my house to lay out a park somewhere between Pittsburgh and Greensburg.

Mr. ALTER. Mr. Chairman: I am perfectly willing to strike out that part.

Mr. McCORMICK. Mr. Chairman: I sincerely hope that the word "parks" will not be stricken out. I think that any one who has studied the development of municipal parks, and has been to Massachusetts, or has been to cities where they have expanded what they call their metropolitan systems which tie up communities bordering on large cities, I do not think if they would take a trip through those parks and study those conditions that they would ask to have the word "parks" stricken out of this resolution. But I am not sure if this thing is in proper shape. I want to ask for information if I can from Mr. Alter or anyone who can give it to me, as to whether or not excluding municipalities and boroughs would not defeat the things which he wants to accomplish. It may not. I am just asking for information. For instance, the control of waterways, the tying up of a city park system with a metropolitan system outside the city or drainage systems, I wondered whether or not the city was to be a part of that new creation, whether this thing could be effective in working out the plan that is proposed.

Mr. ALTER. Mr. Chairman: I think the gentleman from Dauphin has misapprehended the concluding sentence of the proposed section. It is not intended to exclude cities and boroughs from the operation of the section, but to provide that no such district shall consist solely of the territory of one city or one borough.

Mr. McCORMICK. Mr. Chairman: I accept that. I thank you. One more question, if I may.

Mr. CARSON. Mr. Chairman: Would not that language be a satisfactory substitute for the proviso, if the stenographer will repeat?

Mr. ALTER. Mr. Chairman: The proviso was drawn by some one other than myself.

Mr. CARSON. Mr. Chairman: I think it is preferable to what is

already there. My mind is in favor of this proposition, but I am really in the dark as to the whole thing.

Mr. McCORMICK. Mr. Chairman: One more question as to the districts affected; if this waterway, or flood control, or park system, whatever it may be, should pass through and be confined within the limits of a township only, would that be the district in which the vote was taken, the electors, or would the vote be taken by the entire county through which this improvement passed, because the entire county, a large part of the county probably, in addition to the township would be the property to be improved, and would the vote only be within the area taken or only within the district through which the improvement passed, or would it be the county municipality?

Mr. ALTER. Mr. Chairman: I think the vote would be confined to the district which was to be included; that is, to the territory proposed to be included in the district to be created.

Mr. McCORMICK. Mr. Chairman: And the vote in the districts, in the district, for instance, would not be within the limits of the improvement?

Mr. ALTER. Mr. Chairman: The vote would be confined to the limits of the district which was created for the purpose of making these improvements.

Mr. McCORMICK. Mr. Chairman: We have contemplated in Harrisburg improvements some day that would include the North Mountain in our park scheme—five miles outside the city. It has always been my ambition, and I hope this North Mountain may some day be within our park system.

Mr. CARSON. Mr. Chairman: Is it all within Dauphin county?

Mr. McCORMICK. Mr. Chairman: It is all within Dauphin county. But take some townships. There are only three voters, for instance, in Rush township. That thought came to my mind, and these improvements—

The CHAIRMAN. As the Chair understands the situation, it would be that after the metropolitan district is created, then the vote would be taken within the entire district after these improvements were made.

Mr. ALTER. Mr. Chairman: This is the way I understand it: If the proposed district were to be composed of the city of Harrisburg and the township of Rush, then the vote would be of the district composed of those two municipalities, the three voters of Rush township and the slightly greater vote of the city of Harrisburg.

The CHAIRMAN. The Chair also understands that if the metropolitan district was situate in the city of Philadelphia, near Lower Merion, Radnor and Haverford townships, for instance, and in Montgomery and Delaware counties, the vote of Philadelphia and those three districts would be taken, if they were in the metropolitan district, and the result would work out that the majority in the whole district had voted.

Mr. CONNELLY. Mr. Chairman: I think that is the principle, but I doubt very much if that is the language. We are all in favor of this metropolitan area, but as to the question of working it out, I do not believe that Mr. Alter's amendment carries out the thought that he wants so far as the water problem is concerned, because, in answer to Mr. Pepper, I doubt very much, as I heard that language originally, that there is any taxing power granted there. I do not

believe by implication you can write it into it. Second, I do not believe that the city of Pittsburgh, if it so chooses, can issue bonds as a matter of municipal regulation, chargeable against its own borrowing power, but as to the taxing power, I would unhesitatingly say "no" to Mr. Pepper, and I believe that any close analysis of Mr. Alter's amendment would bear out my main thought, so that the main principle that we are trying to arrive at is not going to be accomplished. If you take that thought, Mr. Chairman, you have still got to cover the problem of taxing power.

The CHAIRMAN. Is it not a fact, I ask for information, that some proposition of this kind which was passed by the recent legislature was declared unconstitutional because the tribunal or body which was created in the metropolitan district did not have the power to tax?

Mr. CONNELLY. Mr. Chairman: You mean in reference to Philadelphia?

The CHAIRMAN. In reference to Philadelphia.

Mr. CONNELLY. Mr. Chairman: That was a question of excess condemnation of property growing out of the parkway. I do not believe that would be the general proposition, but I believe you have correctly recited the general proposition so far as the taxing power is concerned, unless there is a delegation of right. That is the reason why Mr. Alter's amendment, as well as mine, cannot fit into the general plan we are trying to work out here today.

The CHAIRMAN. The Chair's impression was that Mr. Alba Johnson was a member of the commission that was intended to create a metropolitan district outside of Philadelphia, and it was determined that they did not have and could not possess the power to tax, because the power of taxing had to come from the people direct.

Mr. CONNELLY. Mr. Chairman: The only other case is that of creating school districts in Philadelphia, where the board of education had the taxing power. That is the only other case that I know of in Philadelphia where there is any taxing power.

Mr. PEPPER. Mr. Chairman: If Mr. Alter's substitute had not been proposed I was going to suggest that we might meet the criticisms made by Mr. Connelly in his opening statement by adding at the end of the committee's report an additional proviso as follows: "and provided further, that no such incorporated district shall be created wholly within the limits of a city or borough."

Mr. CONNELLY. Mr. Chairman: I think that is Mr. Alter's amendment.

Mr. PEPPER. Mr. Chairman: That is contained in Mr. Alter's amendment, but it there follows a section which differs radically in substance from the earlier part of the section embodied in the report of the committee, and in view of the doubts that have been expressed about the existence of the taxing power, the borrowing power and the assessment of benefits under the substitute, might it not be wise to recur to the section as reported by the committee and safeguard it by the addition of some such proviso as the proviso with which Mr. Alter's substitute concludes? It seems to me that we want to preserve the benefit of the thought of Mr. Alter's substitute, but I submit that the grant of power as reported by the

committee is fuller, more comprehensive probably, and more effective than the grant in the substitute.

Mr. REED. Mr. Chairman: I appeal to Mr. Alter again to strike out of his substitute the words "any other conservation and development of the natural resources of the commonwealth." Now, we talk every once in a while here about our duty being to mold this Constitution in line with modern thought. Modern thought seems to be to find some new way for taxing the people for some supposed benefit. The municipalities have all the powers they need today for the creation of parks and other things of that sort that are not an absolute necessity for the benefit of their people. If anybody, for instance in Pittsburgh, cannot find room enough in Schenely Park or Highland Park for his energy, he can go on a street car fifteen or twenty miles into the county and work off all the surplus energy he has got. I for one see no reason for taxing the people or overtaxing them for luxuries. Mr. Alter has kindly consented to strike out the word "parks" but he has left in the words "any other conservation and development of the natural resources of the commonwealth." Cannot we trim this down to what we are trying to get at, namely, some provision by which a great necessity can be met?

Mr. ALTER. Mr. Chairman: I will be very glad to strike out the expression to which Judge Reed has referred. Personally I am not anxious to have very many things in this. I was willing to introduce this substitute because it seemed to me to reduce the number of possible powers very greatly, but personally I am quite willing to reduce them still further, especially to strike out the provisions suggested by Judge Reed.

The CHAIRMAN. The Chair understands that the words "any other conservation and development of the natural resources of the commonwealth" will be stricken out.

Mr. ALTER. Mr. Chairman: Yes, sir.

The CHAIRMAN. I thought some gentleman on the floor suggested that something else be stricken out.

Mr. McCORMICK. Mr. Chairman: Is this amendment now before the Committee, the substitute?

The CHAIRMAN. Yes, sir.

Mr. McCORMICK. Mr. Chairman: And it is the only thing before the Committee?

The CHAIRMAN. For vote; yes, sir.

Mr. McCORMICK. Mr. Chairman: Then to bring this thing before the Commission I would like to move that the word "parks" be reinserted.

Mr. CONNELLY. Mr. Chairman: I second that amendment.

The amendment was agreed to.

Mr. CONNELLY. Mr. Chairman: I also want to move that the words "and other public improvements" be inserted.

Mr. McCORMICK. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. CARSON. Mr. Chairman: Well, now, how vague that is—"and other public improvements." What definition is there, what limit is there upon "public improvements" except the fancy of the individual who has some particular or favorite scheme in mind? I am still in the twilight as to this whole matter, and I do not know

that I can give either an intelligent or conscientious vote either for or against this proposition. I can well understand that a broad vision of public improvement, using that term in the sense intended, which promotes not only the health of the community, meaning a pure water supply, freedom from contamination of sewage, the elimination of factory sites on the borders of streams, which now discharge their polluted water into the drinking supply of a great city; and I can also understand the advantages to health which may come from trundling children who are sick out in the air and sunshine, and also the advantages of walking up and down hill to get athletic exercise; but "other public improvements" seems to be exceedingly vague. Now, I would not be one to cast a vote against the rational extension of improvements beyond the bounds of such arbitrary lines which, according to our history, are purely arbitrary such as where counties are now placed or where townships spring up, or matters of that sort. Every man, of course, views these questions more or less broadly, and his judgment is more or less highly colored by his own local surroundings. I think largely in the terms of the topography of Philadelphia, just as Mr. Connelly has done; and Judge Reed I believe is thinking in the terms of the topography of the Allegheny valley. I take it from what I know of the topography of the western part of the state that the danger of floods in the Allegheny river, and also possibly from the Monongahela, is very much more serious than those which occur to us in the eastern part of the state. The valley of the Delaware does not carry with it such a dangerous volume of water, but the valley of the Schuylkill undoubtedly does because hill bound.

Mr. REED. Mr. Chairman: How about the Susquehanna?

Mr. CARSON. The Susquehanna! I am glad to say that it has not obliterated Mr. McCormick's view of the park with the mountains standing out above him and before him, a perfect Ararat where three citizens can gaze into the horizon and see the returning dove. But I do not want to be facetious. I am sure there are certain practical difficulties to be met, and we ought not to make a limitless reservoir of power in the Constitution, to be drawn upon *ad libitum* during the next fifty years so that our work would stand as a source of power without buttresses so dangerous that in itself it may constitute an eruption of power at the instance of somebody who suddenly draws out the plug or digs into the bank and thus sweeps out existing institutions very much to the detriment of those who dwell under their shadow for their money-making needs. I know there are a great many streams around Philadelphia which we would like to see included in our park system. In the northeastern direction we have the Pennypack. Well, no; that is getting up into Bucks county. Here we encounter the Montgomery county line and there we encounter the Delaware county line. We are hemmed in and our shape is very much like this book. We have Delaware county to the south and partly to the west, Montgomery county to the west and partly to the northwest, and Bucks county on the north, all hemming us in. Now, we want to expand that way and take Pennypack creek, and we want perhaps to take in another stream, perhaps a tributary of the Pennypack. We then have certain streams in Delaware county, Ridley creek, Darby creek and Chester creek, all of them running through deep valleys before they pour their waters into the Delaware. Now, to get an incorporated district which embraces all of that territory,

and which, under the terms of this language, could be extended not only as to water supply, but the flow of streams, flood control, water transportation, would mean canal systems, water supply and development of water power. I do not know whether it would mean development of factory sites run by water, which would be to a certain extent a menace to all the preceding propositions, for you cannot put up factories without affecting the purity of the water. Sewage disposal, sanitation and parks are proper, but after another long list of purposes come those indefinite words, "and any other public improvement." I think they are dangerous, sir. I do not know where these propositions came from, but they evidently have been very carefully considered by somebody, but I have not yet heard from anybody a clear, definite expression of a concrete proposition which presented a pressing public need which ought to be intelligently met. We are in a vague atmosphere of imagination dealing with the future. We want to do good. We want to expand. All that is perfectly proper, but we must take notice of existing conditions. We must take notice of existing insufficiencies of power. We must take notice of conflicts of jurisdiction. We must take notice of the fact that we are shaking to a certain extent the stability of things which have long been in our midst and to which we are gradually awakening, either as to their improprieties or as to their having outlived their usefulness, but we cannot intelligently put into the Constitution such a general provision without taking an intelligent and a deliberate survey of the situation. We ought to know exactly what it means, where it leads, what evils are calling for remedy, and address ourselves to those.

Mr. PEPPER. Mr. Chairman: It does not seem to me the subject is so complicated or mysterious as has been suggested. As I understand it, the existing divisions of the state are primarily political or governmental divisions, counties, townships, boroughs and cities. These divisions take no account, or very little account, of natural conditions or boundaries which determine the scope of a public improvement for control of streams, for sewage, for reclamation of flooded areas, for the running of a long intersecting sewer to serve a number of communities, for bringing water by aqueduct or otherwise from a remote place for the benefit of a number of communities. Such improvements almost certainly transcend the limitations of divisions created with reference not to any public improvement, but purely with reference to governmental or political consideration. Now, the purpose of this section, as I understand it—

Mr. CARSON. Now, Mr. Pepper, I have your mind going; please outline what the author had in mind.

Mr. PEPPER. The author can express it much better than I can; but what I see in it is a grant of power to the legislature to make divisions within the state that are not political or governmental. It is a grant of power to the legislature to study conditions as they may arise and create incorporated districts which are not governmental or political, but whose composition, boundaries and nature are determined by circumstances not taken into account in the present sub-divisions of the commonwealth, and instead of trying to enumerate the principal instances in which that thing may be done, it seems to me to be much wiser to confer upon the legislature the general power to incorporate as and when these conditions may arise

and require treatment than it is to undertake an enumeration which will be at best partial and which may be defective through the omission of some thing that will turn out to be highly important. We are putting in and taking out on the floor particular items. There must be a number of items that none of us have thought of. Why limit the general assembly in the grant of power of this sort by such modifying words as have been proposed? Why not recur to the language of the draftsman of the section which leaves the general assembly to deal with all conditions that arise by creating incorporated districts, and conferring upon those districts the powers necessary and adequate to the accomplishment of their purposes, and safeguard cities and boroughs by providing that there shall be no such incorporated districts wholly within their limits? It seems to me that we shall err if we attempt to enumerate or define too clearly, and that we shall also lose a great opportunity if we fail to confer upon the legislature the power to divide this state otherwise than for political and governmental purposes, and if Mr. Carson wants particular instances or cases in which—

Mr. CARSON. The whole subject is entirely new. I am only asking for information. My mind is not made up either in opposition to the plan or in its favor, but it being new to me and not having had the advantage of the debate which took place in the committee, I am simply asking those who are familiar with the subject to let me know what it is.

RECESS.

Mr. FISHER. Mr. Chairman: I move the Committee of the Whole do now take a recess until 2.30 o'clock this afternoon.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1.15 o'clock P. M., the Committee took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The Committee of the Whole reconvened at 2.30 o'clock P. M.

The Chairman, William I Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Committee having arrived, the Committee will be in order.

NEW ARTICLE, SECTION 5.

The question under discussion is the substitute proposed by Mr. Alter for the report of the committee as to section 5 of the new article on page 2 of today's calender.

The Secretary read the section proposed by Mr. Alter as follows:

The general assembly may provide for the creation of classes of incorporated districts wholly or partly within the boundaries of one or more municipalities and may vest in such incorporated districts the power to provide for the regulation, the flow of streams, flood control, water transportation, water supply and development of water power, sewage disposal, sanitation, parks and any other conservation and development of the natural resources of the commonwealth; provided, that no such incorporated district shall be created or its boundaries extended except by the consent of the electors resident within the territory of the proposed boundaries of the in-

corporated district, who shall vote on the question at an election that may be held as provided by law; provided further, that no incorporated district shall be created entirely within the boundaries of a city or borough.

On the question recurring,

Will the Committee agree to the motion?

Mr. CONNELLY. Mr. Chairman: I have tried to reconcile some thoughts and I am having an amendment prepared which I was going to submit to Mr. Alter. I think it will be ready shortly and I think we will be able to save time if we delay action on this section for the present.

The CHAIRMAN. I think we can pass this for the moment until Mr. Connelly's amendment is put in form.

NEW ARTICLE, SECTION 7.

The CHAIRMAN. The next section in order for consideration is section 7 of the proposed new article of the Constitution, the report of the special committee on local government being that section 2 of article XIV of the present Constitution shall become section 7 of this article.

The Secretary read the section as follows:

Section 7. The officers of all counties, townships, cities and boroughs shall be elected at a municipal election or appointed by an officer or agency of the municipality as may be provided by law.

On the question,

Will the Committee adopt the report?

Mr. ENGLISH. Mr. Chairman: I would like to offer a substitute for this section.

The CHAIRMAN. The substitute will be received.

The Secretary read the substitute as follows:

Section 7. County commissioners, sheriffs and treasurers shall be elected. All other municipal officers shall be elected or appointed by an officer or agency of the municipality as may be provided by law.

On the question,

Will the Committee agree to the substitute?

ELECTION—APPOINTMENT OF COUNTY OFFICERS.

Mr. ENGLISH. Mr. Chairman: My understanding is that last week the Commission decided to reject the sections marked 13 and 14 of the committee's report and to substitute therefor sections 1 and 7 of article XIV of the Constitution as it now stands. These sections recognize the fact that county commissioners, sheriffs and treasurers are elective officers. In order, therefore, to harmonize the sections with the section already adopted it seems to me that it will be necessary to redraft section 7 so as to provide for the recognition of these three officers as elective and then preserve in the section, as I think the substitute does, the feature which it was intended to cover, that is, the right of the municipality to appoint or elect its own agencies.

On the question recurring,

Will the Committee agree to the substitute?

It was agreed to.

The CHAIRMAN. May the Chair inquire whether the amendment to section 5 of the new article by Mr. Connelly has been prepared?

Mr. CONNELLY. Mr. Chairman: Yes, sir.

NEW ARTICLE, SECTION 5.

The CHAIRMAN. We will now resume consideration of section 5 of the new article.

On the question recurring,

Will the Committee agree to the substitute as amended?

Mr. CONNELLY. Mr. Chairman: I offer the following substitute.

The CHAIRMAN. The substitute will be received.

The Secretary read the substitute as follows:

Except that commissions or such other agencies as the general assembly may designate may be created for such of the cities, including boroughs and townships, as may be classified by law, the boundaries of their jurisdiction established, their expenses provided for and their powers and duties prescribed, to secure co-ordinated, comprehensive plans of highways and roads, parks and parkways and all other means of inter-communication, land sub-division, water supply, the flow of streams, flood control, water transportation, development of water power, sewage disposal, sanitation, parks and other conservation and development of the natural resources of the commonwealth, collection and disposal of garbage, housing sanitation, health, playgrounds, civic centers and other public improvements where the exercise of such public powers and duties is not otherwise provided for by law.

INCORPORATED DISTRICTS.

The CHAIRMAN. This as I understand Mr. Connelly's motion is offered as a substitute for everything now pending before the Committee on this section.

Mr. CARSON. Mr. Chairman: I second the substitute.

On the question,

Will the Committee adopt the substitute?

Mr. CARSON. Mr. Chairman: I was going to ask Mr. Connelly whether he would have any objections to the injection of the word "irrigation."

Mr. CONNELLY. No, sir.

Mr. CARSON. Mr. Chairman: After the words "flood control."

Mr. CONNELLY. No, sir.

Mr. CARSON. I have been very much impressed in my travels over the state by the damage which is wrought from time to time by drought, a long-continued drought, which is just as injurious to farming interests as a flood is in spring time. Now this great valley of the Susquehanna, which appeals to me very strongly, is ravaged sometimes by a flood. The water rushes down the channel of the river and through the Chesapeake out into the ocean. After a period of excessive rainfall you may have a long period of drought, cornfields are parched, potato patches are dried up, and the water which would relieve a situation of that kind has been permitted to go out to the sea. It seems to me that it would be quite in the way of conservation to the agricultural interests of the state if in some way a word were introduced there which would look to an intelligent plan of irrigation so that while you are controlling floods you can store up waters in reservoirs of sufficient capacity to be tapped by a series of irrigating ditches as in Oregon, Montana and Wyoming for the re-

lief of a situation of this kind. I therefore would ask Mr. Connelly if he has any objection to the insertion of the word "irrigation."

Mr. CONNELLY. Mr. Chairman: No objection.

Mr. CARSON. Mr. Chairman: I want to ask the gentleman another question. That is, what is the significance of the word "except?"

Mr. CONNELLY. Mr. Chairman: Why, I think that is a misprint. That word ought to be stricken out.

Mr. CARSON. Mr. Chairman: That is what I think. It should read "that commission or such other agency," and so on. Perhaps there is some previous context that would explain it.

Mr. ENGLISH. Mr. Chairman: I think we are all pretty much of one mind as to the advisability of incorporating in the Constitution something that will put beyond question the power of the general assembly to provide for the situation which has been described here to-day. I have been wondering, because I have not the language of Mr. Connelly's amendment before me, whether it is quite broad enough to give to these municipal districts, whatever they are called, the power that is necessary to perform the functions that they are intended for. As I recall it the proposed substitute seems to provide for the creation of a commission which will be charged only with the duty and function of preparing plans. It seems to me that it ought to go much farther than that. I think perhaps the uncertainty will be removed when the amendment is before us and we see the context.

Mr. REED. Mr. Chairman: I trust every Commissioner will think of everything possible to put into this section, because if we are to commit ourselves to a joy ride of this kind we ought not to suppress anybody's desire. It seems to me it is a proposition that is full of all sorts of trouble. We start out with an innocent desire to meet the emergency, and we have got into this almost everything upon which it is possible to spend money. That simply premises that I am going to vote against it.

Mr. ALTER. Mr. Chairman. May I ask the gentleman whether he intended to eliminate the provision which is in the committee's report as well as in the substitute offered this morning, providing for a popular vote upon the creation of such districts as are here contemplated?

Mr. CONNELLY. Mr. Chairman: I propose to follow that subsequently by offering an amendment to a section to provide for a popular vote.

Mr. ALTER. Mr. Chairman: May I ask the gentleman further whether the concluding expression of this amendment "where the exercise of such public powers and duties is not otherwise provided by law," means that it is not intended to vest in the proposed district any of the ordinary municipal powers which are already provided for and vested in the cities, boroughs, and townships, respectively?

Mr. CONNELLY. That is correct sir.

Mr. ALTER. Mr. Chairman: Then that is safeguarded.

Mr. PEPPER. Mr. Chairman: I hesitate to oppose the substitute, because I am in hearty agreement with the purpose which Mr. Connelly has in view; but I cannot help feeling, sir, that we are making a mistake in framing a constitutional provision if we suffer ourselves to become involved in this endless enumeration of specific exercises of power by the general assembly. It seems to me that one of two

things must be true, either that there should be a grant to the general assembly of the right to create districts to further such public needs as may from time to time require the creation of districts from existing municipal sub-divisions, or else that this is merely as Judge Reed says a kind of constitutional joy ride where we throw in everything that occurs to us at the moment at the peril of leaving out things that are important, or include things that ought to be excluded, or include things which on second thought we should omit. I have the feeling that if we concentrate upon it we could evolve a section which would confer upon the general assembly the particular power to create incorporated districts for the promotion of public improvements where the existence of such districts is necessary because of conflict with the geographical or other boundaries of existing political sub-divisions; that we can confer some general power upon the legislature and then safeguard it in two ways. The first safeguard is the popular vote, and the second safeguard is to provide that no such incorporated district shall be created within the limits of an existing city or borough. I do hope that before we pass this long enumeration of specific exercises of legislative power we shall pause because it does not sound to me like a creditable constitutional provision.

Mr. REED. Mr. Chairman: I would like to move that this section be referred back to the committee.

The CHAIRMAN. The Chair hopes that that will not prevail.

Mr. REED. Mr. Chairman: With the instructions to report in the morning.

The CHAIRMAN. If we are going to finish our work we must thresh out the proposition on the floor. That is the only place, in the Committee of the Whole, that the subject can be disposed of. If we keep on referring them back we will be here endlessly.

Mr. CONNELLY. Mr. Chairman: I have no objections to striking out and leaving to the general assembly any particular general powers that will carry out this feature. My only purpose in offering the amendment, which is not entirely original with me, because such an amendment was offered at one of the sessions of the legislature but was defeated there; in other words, did not get to the people. I am only in favor of trying to arrive at a workable theory of the metropolitan plan in such a broad way that the thing can be worked out. That is why I opposed the report of the committee this morning. Mr. Alter's amendment was not quite clear. It is true that I have enumerated in the existing amendment a great many things that ought to be left out, but it is something to work on to find out what is the best thought to carry out this purpose.

On the question recurring,

Will the Committee adopt the substitute?

It was not adopted.

On the question recurring,

Will the Committee adopt the substitute as amended proposed by Mr. Alter?

Mr. ALTER. Mr. Chairman: This substitute having been amended since I introduced it, I feel at liberty to vote against it.

Mr. CONNELLY. Mr. Chairman: I offer the following amendment, inserting the words "other public improvements."

The CHAIRMAN. Mr. Connelly proposes an amendment to add the words following the word "had" "and other public improvements."

Mr. CARSON. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: Before we vote on that I should like to make an objection similar to the one made a moment ago. This seems to me to be objectionable on the same grounds as the other. Here is a shorter enumeration, but still an enumeration of a number of specific or illustrative cases in which a district of this sort may be incorporated, but the precise reason for enumerating instances of the exercise of the power is not clear to me. If by adding the words, "or other public improvements" we are going to comprehend all that is specifically stated, why not leave out the specific enumeration? And if the words "other public improvements" are not intended to add anything to the thought that has preceded, why make the section obscure by including them? Is it not possible for us to approach the matter from this point of view; that wherever public improvements are contemplated which are likely to be of benefit to the people of more than one municipality, under such circumstances the general assembly may by general law provide for the incorporation of districts to promote such public improvements, with the safeguards that have already been referred to? I should be glad to attempt to draft it, but I am putting it now extempore to bring out the thought that I want to press. Not that I am in the least degree opposed to the thought that prompts this resolution but rather anxious to perfect it. It seems to me that we must state a principle. The principle is that there are likely to be cases of public improvement of advantage to the citizens of more than one municipality. If such is the case there ought to be a provision by which the public improvements can be facilitated through the creation of an agency specially adopted to promote them; and if we make the test sufficiently clear, the safeguards sufficiently strong, I think we shall be conferring upon the legislature a very great and salutary power. I do believe we shall obscure the situation if we enumerate a few instances of general power and then use the dragnet language which will be subject to discussion as to whether the rule of *ejusdem generis* applies, or whether some new power is intended to be granted.

The CHAIRMAN. Of course, we are in Committee of the Whole and any time Mr. Pepper or any other member can bring forward any modified or new section covering the thought in mind it may be done.

Mr. ENGLISH. Mr. Chairman: I trust the substitute will not prevail for another reason. The members of the Commission will observe that the class of corporations referred to as municipalities are given the power to provide for the regulation of certain specific things. Now, it seems to me that in order that these municipalities might function properly they must have certain very well defined municipal powers, among which are the right of levying taxes, the right of eminent domain, and a great many other things of the same character, the assessment of benefits which by no possible construction could be included in the word "regulation." If this substitute, therefore, prevails it seems to me that the general assembly would not be in the position to give the corporations the power that they would have to have in order to do their work. Now, I will submit, if this section

is defeated, another substitute which I think meets the criticism which the gentleman from Philadelphia so well made this morning to the effect that it ought not to be possible, as it might be possible if the language of the original report is adopted, for the municipal function to be taken away from a municipality and be given to some such commission as might be created under the provisions of this section which would have its jurisdiction limited to the particular municipality. I think that criticism is sound. It can be easily met. I will offer a substitute which I think will dispose of it. Otherwise, it seems to me we can do no better than to adopt the report as originally submitted.

SECTION 5 OF NEW ARTICLE POSTPONED.

Mr. REED. Mr. Chairman: With the greatest of diffidence I move to postpone further discussion until tomorrow so that Mr. English may have his amendment in shape. I think we will save time.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE III, SECTION 15.

The CHAIRMAN. We will now resume consideration of section 15 of article III.

The report of Committee No. 1 as to section 15 and the parliamentary situation as the Chair understands it, is that there is a substitute for section 15 proposed by Mr. Pinchot and offered by Judge Reed.

The Secretary again read the substitute as follows:

On or before February 15 of each odd-numbered year the Governor shall submit to the general assembly a budget. The budget shall contain a statement of proposed appropriations and estimated revenues for the two fiscal years next ensuing, including appropriations for charitable, educational and benevolent purposes. The Governor shall, at the time of presenting the budget to the general assembly, submit a bill containing the proposed appropriations for the fiscal years covered by said budget, as well as any bill or bills embodying such recommendations as he may desire to make as to sources of revenue. No appropriations for charitable, educational or benevolent purposes to corporations and associations not wholly under state control shall be made by the general assembly except as budget items. The Governor, in the budget, may not insert any item for the benefit of any such corporation or association, but shall either specify the amount of appropriation proposed in the case of each class of beneficiaries, or may include the aggregate of all such appropriations in a single item. In either case, he shall submit a plan for distributing the item among classes of beneficiaries according to a schedule based upon the relative importance of said classes and among beneficiaries within each class according to the relative amount of value of service rendered, and relative conformity to standards of excellence and the plan shall include rules for measuring service and fixing standards. Such rules shall apply equally and uniformly to all beneficiaries of the same class.

Immediately upon receipt of the Governor's budget, the presiding officer of the House of Representatives shall introduce in such House the said appropriation bill and also all bills relating to sources of revenue submitted by the Governor.

The general assembly shall have power to decrease, strike out or otherwise alter any item in the appropriation bill; provided, that in the case of items of appropriations for charities, educational and benevolent purposes the general assembly may not change the application of his plan to particular beneficiaries, but may modify the Governor's plan as a whole; provided, that the general assembly may not make a specific appropriation to a specific beneficiary. Until the appropriation bill shall have been finally acted upon by both Houses of the general assembly, neither House shall consider any appropriation measure, unless the same shall be solely for the

immediate needs of the general assembly, or shall have been submitted to the general assembly by the Governor with the request that it be acted upon in advance of the appropriation bill.

The final adjournment of the general assembly shall not take place until a period of ten days shall have elapsed after the appropriation bill shall have been finally acted upon by both Houses of the general assembly and shall have been presented to the Governor.

On the question recurring,

Will the Committee agree to the motion?

BUDGET.

Mr. REED. Mr. Chairman: Without disloyalty to Mr. Pinchot I have been wondering if he would have drawn this section if he had read the section proposed on the calendar. I have not been able to see a great deal of difference between the two, but he was not here last week and did not have the benefit of the discussion.

Mr. McCORMICK. Mr. Chairman: As I read this proposal by Mr. Pinchot, offered by Judge Reed, I think the only real difference is in regard to the plan of distribution. I think he makes a suggestion that is well worthy of consideration.

The CHAIRMAN. May the Chair inquire whether that is real constitutional language?

Mr. McCORMICK. Mr. Chairman: That is a question, of course.

The CHAIRMAN. That is a question for the legal members to discuss.

Mr. McCORMICK. Mr. Chairman: For the legal members to discuss. I have thought to make an amendment of those few lines to the section on the calendar, and therefore would vote "no" on this proposal hoping to amend it later.

On the question recurring,

Will the Committee agree to the motion?

It was not agreed to.

On the question recurring,

Will the Committee adopt the report?

Mr. REED. Mr. Chairman: Having shed myself of all responsibility and coming back to my own, I cannot see where this is any improvement on the original budget provision that we adopted, except that we have taken away from the Governor the duty and the power of submitting a bill containing the proposed appropriations by item. That is so much to this hospital, so much to that. How he is going to make up a budget and report that there should go to hospitals one million or two million dollars without having the items, and if he has the items before him why are they to be kept away from the legislature so that the legislature is all in the dark? An appropriation of a million dollars to the hospitals generally without any mention of the hospitals to which it is to go I do not understand. It seems to me that the original proposition as reported by the committee which provided that the Governor should state in his budget or in his proposal the names of the charities and the amount which presumably will come to him from the State Board of Charities, or some other department, and that the legislature will have before it coupled with the restriction that it may not add to that list any-

thing that is not recommended by the Governor, surely is complicated and insensible to me.

Mr. McCORMICK. Mr. Chairman: As I understand it, one of the difficulties in this long debate which we have had for so many days on this question of money appropriated to charitable institutions not controlled by the state is to prevent, in the distribution of the money that is so given to these private institutions which was tentatively approved by this Commission, discrimination in such distribution. In other words, I do not think there is any argument here as to the right of the Governor or any commission which might be created by the legislature to pick out certain favored institutions and make appropriations to them if other institutions should conform to all the standards as set up by the executive or by the legislature. I do not see in this proposal anything that would prevent that discrimination and make the distribution of the lump sum equal and uniform to any institution that conforms to the standards as set up, and therefore I would like to offer the following resolution, at the end of the page after the word "law," after the second paragraph, "provided that any corporation or association whose work or service conforms to such conditions and to such standards of excellence prescribed by general law or by an executive agency appointed by law shall be entitled upon application to its proportionate share of the gross sum appropriated."

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

The CHAIRMAN. For information may the Chair inquire from Mr. McCormick whether he means that every institution in the state that performs free service shall receive its proportion of the sum appropriated?

Mr. McCORMICK. Mr. Chairman: As I understand it under legislation so passed, section 17 requires that "corporations or associations not under the control of the commonwealth but engaged in work or service deemed by the general assembly to be for the public good; provided, that such work or service conforms to such standards of excellence as may be prescribed by law," the Governor possibly can have the power delegated to him by the legislature to set up certain standards of excellence, standards of performance, standards where free service would be recognized; and what I want to do is to give every institution in the state of Pennsylvania the right to get their proportionate share of the gross appropriation, provided they conform to the standards as set up by the state legislature or the Governor, as required in the section that has already been adopted.

The CHAIRMAN. It seems to the Chair that would cost the state millions more than are now appropriated. The rule today, as I understand it, is that there are two things that must concur in charitable appropriations of this kind, the free service rendered and the apparent need of the institution. It matters not how much free service an institution renders; if it does not have the financial need for the money it does not get it. In other words, if it is self-supporting it does not receive any appropriation.

Mr. McCORMICK. Mr. Chairman: You will notice it is upon application. They must apply.

The CHAIRMAN. Just so. We have that in mind. I do not mean I am opposed to that treatment. That is the rule today. There are a great many institutions that do a great deal of free service that get no state appropriation at all because they do not need it.

Mr. McCORMICK. Mr. Chairman: They do not want to apply for it.

The CHAIRMAN. They do not require it; their revenues are ample.

Mr. McCORMICK. Mr. Chairman: They do not apply for it. That would be one of the standards or conditions set up by the legislature. But what I want to do is simply establish the fundamental principle that is absolutely sound and right and has not been disputed on this floor, that in the granting of taxpayers' money to private institutions there should be absolutely no favoritism or discrimination, but that every private institution that establishes its position and has conformed to the standards so set up has an equal right to the money.

Mr. REED. We are making progress. Last week we could not trust the legislature, and now apparently we cannot trust the Governor, we will end up by not trusting ourselves, and nobody will trust us. It seems to me that the system, as I have said, as suggested in the original report of the committee, which gave the Governor the discretion, properly exercised, I have no doubt, to report to the legislature all institutions that in his judgment were worthy of support and appropriation, following certain general rules as to free service which they must conform to, and the supervision by the Auditor General, then they get the money. All that is followed by the action of the legislature which gives to the state every protection that it needs in the care of its dependent poor, sick, or whatever they may be. I still beg of this Commission to stop before they adopt this provision which is cumbersome and mechanical, and consider the propriety of adopting the report of the committee.

Mr. PEPPER. Mr. Chairman: It seems to me that the problem that we are facing is, within the sphere of appropriations, somewhat similar to the problem which the framers of the Constitution of 1874 faced with respect to the general field of legislation. The great evil which they were called upon to deal with at that time was the abuse of local and special legislation, and they met the evil and to a great extent remedied it by insisting that local and special laws should not be passed in a great variety of cases that were enumerated. They introduced the salutary system of general legislation under which we have since lived. Now, we are called upon to face a similar evil within the sphere of appropriations. It has not seemed to me that Judge Reed has met the difficulty. It may be quite true that the very best effort, the most intelligent effort will be put forth by the Governor in the way of discriminating between one institution and another for the public welfare and for the advantage of the institution and the service which it renders, and yet be subject to all the objections and difficulties than can be urged in any case of special or discriminatory action. Unless we can devise a system which will introduce the principle of uniformity and generality into the appropriations for these purposes we shall lose the safeguard which the Constitution of 1874 introduced in the case of legislation at large. It seems to me that Senator Fisher's resolution marks a great advance on anything that has been proposed heretofore, and I very much

hope that it will prevail, provided that it can be amended in one particular. That is in such a way as to insure the uniformity of distribution within the class of beneficiaries, according to a system which will be general in its operation and will make the playing of favorites impossible. I have reason to think that Senator Fisher has under consideration an amendment which would accomplish that reform. If I am right, I think his resolution as amended in that particular would be the very best thing for us to adopt.

Mr. FISHER. Mr. Chairman: Such an amendment as has been mentioned by Mr. Pepper has been suggested, but the matter now before the Committee is the amendment offered by Mr. McCormick, and I presume we had better address ourselves to that amendment and dispose of it before I offer mine.

Mr. McCORMICK. Mr. Chairman: May I ask Mr. Pepper whether or not in his opinion this proposal that is now before us as offered by Senator Fisher, covers the point that I have made in my amendment?

Mr. PEPPER. Mr. Chairman: In my judgment it does not. I am in sympathy with your proposal to introduce a provision for a uniform plan which will make the distribution free from the objection of favoritism and the specializing of particular institutions; but it seems to me that the addition of a very few words to Senator Fisher's resolution will accomplish that result, and the reason that I mentioned it in debating your resolution was that I thought that if you were to see what he had in mind that possibly it would prove to be a reconciliation.

Mr. McCORMICK. Mr. Chairman: I was very much interested in what Mr. Pepper said in regard to offering an invitation to institutions of the state to come in, because I feel very strongly that just that suggestion and argument shows the weakness of the position that the Commission has already taken. If we do not recognize that the system as it exists today is wrong, we ought to have every institution that wants to come in get its share of this appropriation. There is nothing fundamentally right if you limit the amount of money that we want to pay out to privately controlled corporations unless we adopt the method as it is in our educational system of making a lump sum appropriation to a county based upon a per capita, or as we do with our legislative appropriations based upon appropriating an equal sum for road building and in which the taxpayers will enjoy an equal privilege. But unless you do throw this open to every institution of a similar nature performing exactly the same kind of work in an efficient manner, in accordance with the specifications as laid down by the state authorities, unless they all have an equal opportunity of enjoying that, the thing is not democratic, it is unsound, and it never will stand because there is bound to be discrimination.

Mr. FISHER. Mr. Chairman: It seems to me that possibly Mr. McCormick's opposition arises from the fact that he is assuming that some institutions may be barred by the provisions that we have now under consideration. That is not the case; but there may be institutions, there are institutions, which may not want to benefit by this provision in the Constitution, and we ought not to force help upon them if they do not desire it. There are many institutions in the state which are highly endowed. We have recently had an instance of the munificence of a rich citizen of Pittsburgh endowing hospi-

tals. Those hospitals will have plenty of funds to carry on the charitable work which will fall to their lot. Now, we do not want to force on them state funds because they will not need them. They will not want them. There are other institutions doing charitable work which want to stand on their own feet; they want to have the full credit of their beneficence, and they should have it. Now, this simply creates an appropriation for those institutions that feel they need help, and do not have the resources or endowment to carry on the work that falls to their lot, and under a uniform plan may receive aid and assistance.

Mr. McCORMICK. Mr. Chairman: I think Senator Fisher has mistaken my amendment. I stated that they should be entitled upon application, and only upon application. They are not automatically entitled to it. They are entitled to it upon application. The institutions that you speak of would not get these funds unless it applied for them, under a method adopted by the legislature. I feel that the illustration used by Senator Fisher confirms the principle that I have been fighting for. A benevolent institution is left a legacy of one hundred thousand dollars; five thousand dollars of that goes into the state treasury, and from there is distributed to privately controlled institutions who have absolutely no right to it. Those people have to go down in their pockets and put up additional support. Then there are privately controlled institutions that are not exactly on the same basis. It is not sound, it is not just; it is fundamentally wrong. I believe by the time this Commission is through discussing it it will agree with me.

Mr. REED. Mr. Chairman: It seems to me that this amendment is unnecessary, if I understand the machinery that is provided by this mysterious proposal by Senator Fisher. Now, before the Governor can make any intelligent recommendation to the legislature, he must certainly know what the needs of the institution are if he is going to recommend an appropriation of a million dollars. He must make that upon certain items, and if any institution needs help, that would be the time for them to apply, and apply through him. If this amendment is adopted they can come in after the appropriation is made and claim their share of it, and you would never have enough to go around.

Mr. McCORMICK. Judge Reed, suppose in Carbon county, a county probably of over fifty thousand population, a county that receives today no state aid, why should that county, if it establishes a hospital, performs services according to standards as set up by the legislature, not have the right to go to the Governor and request the Governor to file its application for its proportionate share of the gross sum of the appropriation?

Mr. REED. Mr. Chairman: That is not the question.

Mr. McCORMICK. Mr. Chairman: Then my amendment is absolutely right, and I am trying to make it so. I would have just as much right as the Harrisburg Hospital, which has been getting appropriations for a number of years and getting its proportionate share for services rendered. That is the point I want to make, so that every institution in the state, whether it now gets it or whether it is to be created five or ten years from now, would get its share without going to the Governor for political favor. After applying for appropriations your agency will look it up as to whether it

is carrying on the work properly, and my amendment meets that occasion. If it is carrying on the work in a proper manner, then the Governor, upon that application, must give it its share of that appropriation.

Mr. REED. Mr. Chairman. I do not think the gentleman wants to get Judge Gordon and myself started again on this charity business, and I would suggest if it is in order that we hear Senator Fisher's amendment and it may be possible that the two gentlemen can agree and we can save a little bit of time.

The CHAIRMAN. The Chair hears no objection.

Mr. FISHER. Mr. Chairman: The amendment which I intended to propose is a substitute for that portion of the second paragraph on the first page of today's calendar, beginning in the second line from the bottom of the page after the semicolon and after the word "but." Strike out all of the paragraph after the words "but all such items," and so forth, and substitute therefor the following: "but all such items shall appropriate a gross sum to be distributed among a class or classes of such institutions (as such class or classes may be defined by law) only in accordance with a plan uniform in its application to all the beneficiaries in any class, said plan to be set forth in the appropriation act or to be prescribed by general law or by an executive agency created by law."

On the question recurring.

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman. I hope that the amendment of Mr. McCormick will not prevail and that the one just read by Senator Fisher will be taken in its stead. The reason that I happened to know of the amendment that Senator Fisher had in contemplation is this: I received from the president of the Hospital Association a day or two ago a copy of the letter which that organization had addressed to Senator Fisher, urging the adoption of his amendment with the change which he now proposes to incorporate in it. The Hospital Association is a large and influential organization of officers and superintendents of hospitals. The president of it, Mr. Daniel Test, is superintendent of the Pennsylvania Hospital in Philadelphia, which is not itself a beneficiary of the state appropriations. That organization is definitely of opinion that two things are true; in the first place, that it would be a very great mistake to stop the appropriations by the state to institutions not wholly under state control; and second, that it is highly desirable to reform the method of appropriation in such a way as to make it the result of the application of a uniform plan, instead of by way of special appropriation to individual institutions. That highly intelligent and far-sighted group of men have come to the conclusion to which we, after debate, have come in this Commission; namely, that the fundamental principle of administering some of the state service through institutions which the state does not wholly control is the sound one for Pennsylvania, but that it is highly important that the system of administration should be improved and safeguarded. It is upon that we are focusing our attention. It is natural that in the course of the debate upon that question of method, the gentlemen who have strong convictions on the subject of the principle should be betrayed into discussing a question that is not now before us; but the question before us is the question of method. If the amendment proposed by

Senator Fisher prevails, we shall have the budget section modified in its application to the charitable institutions in such a way that there will be participation both by the executive and the legislature in the responsibility of decision. There will be no opportunity for special legislation in favor of particular institutions. We shall have a plan uniform in its operation upon all classes of beneficiaries or members of a class of beneficiaries, and we shall, it seems to me, go a long distance in the direction of an ideal system. Mr. McCormick realizes, I think, that it must be true, as Senator Fisher has said, that no institution that comes within the category is disabled from applying for appropriations. It is not necessary by constitutional enactment to give institutions the right to apply for the benefits of state appropriations. They may do that without constitutional prescription. The great question is when they do apply what is the system by which their application shall be passed upon and determined? A clean-cut and intelligent system, it seems to me, is provided by Senator Fisher's proposal if it be amended in the way that he has suggested. I venture to suggest it is in the interest of clear thinking and sane legislation if the Commission votes down the pending amendment and proceeds to adopt Senator Fisher's.

Mr. McCORMICK. Mr. Chairman: May I ask Mr. Pepper if he thinks Senator Fisher's proposal covers the subject-matter of my amendment?

Mr. PEPPER. Mr. Chairman. I think it covers it precisely and effectively. I do not think there is room for misunderstanding the provisions of the amendment that Senator Fisher has proposed.

Mr. McCORMICK. Mr. Chairman: In other words, any institution in the state of Pennsylvania that conforms to the standards set up by the general assembly or agencies created by the general assembly or the executive would be entitled upon application to its proportionate share of the lump sum appropriated?

Mr. PEPPER. Mr. Chairman: Yes. I understand that it will be absolutely impossible, under the operation of this amendment, to play favorites as between institutions, and that any institution which conforms to the standards set up by the executive or the agency established by general law will stand on the same footing as any other institution in the same class.

Mr. FISHER. Mr. Chairman: I feel quite well satisfied that the section as now offered will meet all the objections raised by Mr. McCormick. It finds its prototype in the distribution of the school fund, or in the distribution of certain funds for roads. Townships of the second class may participate in the general fund which the legislature creates by conforming to certain standards of road construction. So in the distribution of the general fund for schools, there is no log-rolling in that. There is no favoritism, there is no friction, but a lump sum is appropriated, and standards are set up whereby the school districts of the state may participate in the general fund. Now, it seems to me that we have accomplished what we set out to do by providing practically a similar thing for the aid of the private charitable and educational institutions of the state.

On the question recurring,

Will the Committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee adopt the report?

Mr. FISHER. Mr. Chairman: I offer the following amendment, which I will ask the Secretary to read.

The CHAIRMAN. The amendment will be received.

The Secretary read the amendment as follows:

Strike out after the semicolon in the second line all of the paragraph and insert in lieu thereof the following: "but all such items shall appropriate a gross sum to be distributed among a class or classes of such institutions (as such class or classes may be defined by law) only in accordance with a plan uniform in its application to all the beneficiaries in any class, such plan to be set forth in the appropriation act or to be prescribed by general law or by an executive agency created by law."

On the question,

Will the Committee adopt the amendment?

Mr. FISHER. Mr. Chairman: Just by way of explanation—I do not want to take any credit for this amendment. As was said by Mr. Pepper, it comes from the president of the Hospital Associations of Philadelphia in a letter in which he states that his association has been giving very serious thought to the very question which has been engaging the attention of this Commission, and with this slight amendment, which originates from that source, they are entirely satisfied with the provision which is now before the Commission.

On the question recurring,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

Mr. McCORMICK. Mr. Chairman: May I ask Senator Fisher one question that is giving me a little trouble here? "No item of the general or other appropriation bill shall appropriate any definite sum of money to any such institution or designate any one or more of such institutions as beneficiaries." Would it be possible under the wording of this act for the specification to be made such that it could only include one institution? There may be a classification whereby only one institution would be eligible, in which event the legislature could do so and could introduce items under a classification which only cover one institution and practically carry that on the same system as now carried on.

Mr. FISHER. Mr. Chairman: That is a question of interpretation which would have to be referred to the court. We have some distinguished jurists here who might be better able to answer Mr. McCormick's inquiry than I, but I think I am safe in saying that no such interpretation would be put upon such a constitutional provision.

On the question recurring,

Will the Committee adopt the report as amended?

It was adopted.

Mr. FISHER. Mr. Chairman: I move that the Committee do now proceed to the consideration of the report of Committee No. 5 of which Dr. Smith is the Chairman.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE X, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article X of the Constitution, the report of the committee being that this section shall be changed to read as follows:

The Secretary read the section as follows:

Section 1. The general assembly shall provide for the maintenance and support of a thorough system of primary, secondary and higher education by appropriating bi-annually:

(a) For the public schools an amount at least equal to the total appropriated by the school districts or any other public corporation vested with the power to contribute in the support of such schools during the two preceding fiscal years.

(b) For the state normal schools at least two millions.

(c) For institutions of higher learning which conform to the requirements of the college and university council or other state agency vested with the power to determine standards of excellence for such institutions, at least eight millions.

On the question,

Will the Committee adopt the report?

EDUCATION.

Mr. SMITH. Mr. Chairman: It is only fair to my associates of Committee No. 5 that I should say that this report was not adopted in the committee. We did not get together long enough to give it consideration. The energetic Secretary of this Commission called me up last week and insisted that a report should come from Committee No. 5 on article X. You have it. It is here for discussion. It is the result of conference with teachers of all ranks throughout the commonwealth. The truth of the matter is, Mr. Chairman. I have been informed since arriving here today that it is doomed, and a good deal of the spirit that was in me when I walked from the train to this chamber has been lost. The idea that a proposition of this sort, dealing with the education of the boys and girls of this grand old commonwealth, is doomed to the waste-paper basket is a little beyond my comprehension. Education, everybody here concedes, is of the greatest importance. We are hearing a great deal in regard to it from all sections. You have heard a great deal about it, sir, and I have heard much. I belong to that group called the teachers of the commonwealth. Teaching is my business, and has been for two-thirds of my life, and so everything that comes under the head of education naturally gets my attention. There are just a few facts, sir, that I feel I must get before this Commission before you consign these efforts to the waste-paper basket.

The first is this. We are told that Pennsylvania is a rich commonwealth, maybe the richest of all of them, and when we cast about we find that Pennsylvania is not comparable with some of the other commonwealths in the cause of education. In this great state of ours there are twelve thousand seven hundred and thirty-two teachers engaged in one-room or two-room schoolhouses, those little universities of the people that you meet up here on the edges of this county and the adjacent counties; for some of us know all about them, some of us have studied in them. Twelve thousand teachers! Further, the teachers engaged in instructing the boys and girls who have never had a high-school education number four thousand. Think of it! Four thousand teachers of this great state never passed through a high school; the teachers who have attended high schools, two thousand five hundred; and of the ten thousand and thirty-eight one-room rural teachers in Pennsylvania, the normal school graduates number fourteen hundred. That means Pennsylvania is lacking in teaching power; Pennsylvania is not giving the boys and girls, growing up

within its borders, male and female teachers who are equipped to help them forward. Is it right that a state with the wealth this possesses should tolerate a condition such as this? Further, there are eleven thousand four hundred and ninety schools in this state in operation for ten months; there are fourteen thousand two hundred and fifty-four in operation for nine months; there are five thousand nine hundred and seventy in operation eight months; there are ten thousand and eighty-three in operation for seven months. That is, thousands of boys and girls throughout the state are getting not only poorly qualified teachers, but they are having seven months and only seven months of study. The large cities, of course, get the full time. The large cities have magnificent palatial structures, thoroughly equipped, and teachers working in them who are thoroughly qualified, who have been tested and tried, who are not only graduates of high schools or graduates of colleges and universities, but many of them graduates of special courses in education, and so on. There is a great army of boys and girls who do not come in contact with such teachers. There is another item to be jotted down here, namely, the number of schools having a seven-month term will be much larger this year owing to the fact that many districts have not the funds to support them for longer periods. They are closing. Is it quite fair when we possess all the wealth that I am told we do that we should stint education?

The first section of our report calls for the appropriation by the state of a sum of money equal to that appropriated by the school districts of the state. The crux of the matter, as I understand it, is that the state would be bankrupt if it undertook to do this. The New Jersey appropriation per capita is 2.53; California 2.10; Pennsylvania .96 per capita. Other states might be mentioned, but I do not want to detain you. I want to get just a few facts before you. Now, as to the appropriations which have been made in our state. In 1907 fifteen millions were appropriated and thirteen millions, a little over, distributed for common schools; in 1909 fifteen million, and eleven and one-half given to common schools; in 1911 fifteen million, and eleven million four hundred and ninety-eight thousand given to schools; in 1913 sixteen million, distributed twelve million to the common schools; and so on down to 1910, when twenty-four million dollars were appropriated by the legislature, and nine million two hundred and one thousand distributed among the common schools. Notwithstanding the fact that the amount of the appropriation increased during the past twelve years from fifteen million to twenty-four million dollars, the amount actually distributed to the school districts in the regular distribution decreased from thirteen million dollars to a little over nine million dollars. There we are! Now, there is one other point in connection with this school system to which I would like to call your attention for a moment. The states which in 1919 raised a greater per centum of total income for public schools than our own state are these: Montana, raised or contributed fifty-six per centum; Delaware, forty-six per centum; little Jersey alongside of us, forty-seven per centum; and we ten and seven-tenths per centum—in the state of Pennsylvania.

We are not doing as well as our sister states for education. In a lump sum perhaps our friends of the legislature will say, yes; but when you reduce it to per capita, no. Then we are down about number

thirty-seven in the list of states. That is why it is, sir, that this (a) article was permitted to come up for your consideration. Why, sir, it is preposterous. This state ought to have in every township a township high school; and they are conspicuous by their absence in the state of Pennsylvania. You could go to New York state, go to Minnesota, to Ohio, and find there township high schools. They begin at the primary grade and come forward to the high school. The children of the township are collected and conveyed by motor-buses from their homes to the school and from the school to their homes. These township high schools might well be made the social centers of the country. To some of us who are interested in this question of the education of the boys and girls it does seem fair to ask the state to appropriate a sum equal to the sum which the school districts will appropriate. We hear a great deal about the boys and girls of the country crowding into the cities that they may get these additional opportunities. Give them the graded schools they deserve, let them have the four-year high schools, if you please, and you will educate the townships and the counties and the boys and girls will not be so eager to travel to the city. In our great cities we are taking thousands of boys and girls of parents who were not born in this country, or have not been here ten years. They are furnished with the best facilities in the schools. Step into any one of the high schools of Philadelphia, for example, as I have. I could scarcely believe my eyes when I saw what opportunities they had. Then go back into a county like my own native county, York. It is a good county, agriculturally speaking one of the best of all the commonwealth, and we can find one-room schoolhouses, plenty of them, and not with high-school graduate teachers, but with persons who have not had that sort of training. And what is true of that county is true of Dauphin county, is true of many other counties of the state. Yes, money is needed for the equipment and for the salaries of professionally qualified teachers. I wish you could have heard the words of the many teachers of all grades whom I heard speak since they knew this matter of education was coming before the Commission; college presidents, superintendents of schools, the superintendent of public instruction of the state of Pennsylvania, teachers of high schools and the lower grades, and so on. I do not know where the money is coming from to do this particular thing which is requested in this article. But are we going to stand back and lag along and let Minnesota, Illinois, our neighbor Ohio, and the other neighbor New Jersey, say to us, "Oh, yes, you are a grand state, but in education you cannot compare with us?" It will provide the boys and girls with that which is so fundamental and so essential to their well-being in future life. Not long ago I went up into the coal regions to a school where there were little fellows from six to ten years of age. I went into a one-room school first and listened to the recitation which was being held in arithmetic. Of course, I felt with those boys, and then the thought came, well there is a limit here that they cannot go beyond. I journeyed fifteen miles to another school, a mechanics art school in the coal region, and there I saw a similar class of boys same sort of parentage, and they were being given the opportunity to go beyond, and they were becoming mine bosses, engineers, mechanical and electrical, and so on. Naturally the thought came, why cannot this township have its high school where the boys going through the public schools may have the

same opportunity as those who are attending this institute, which happens to be a private affair. We are also asking for the state normal schools, at least two million dollars. That is not too much. It is what the legislature actually gave to the normal schools. I am informed by those who are in contact with the thirteen normal schools of the state that that is scarcely adequate if those schools are to be equipped and conducted as we find them equipped and conducted in adjacent states. There is a report here, handed to me by someone, stating the per capita expenditure for normal schools in Pennsylvania and in twenty-nine other states for five years, 1912 to 1916. I will not read them all, but take New York, one hundred and ninety-three dollars and ninety-two cents; let us take New Jersey, one hundred and thirty dollars and eighty-one cents; and then our own Pennsylvania, how much? Sixty-nine dollars and twenty-nine cents. We have lots of money. We have it for all sorts of things, but here is a class of schools beginning with the fundamental one which is training the teachers, or helping to train teachers who are to go out into this commonwealth, and they are not properly provided for. That is not an exorbitant sum, two million dollars, but we ask to write it in so we may be sure that they will get it. That is all.

Then, if I may pass to the third clause of our report, "for institutions of higher learning which conform to the requirements of the college and university council or other state agency vested with the power to determine standards of excellence for such institutions, at least eight million dollars." The state of Minnesota this year, 1919 to 1920, by act of legislature has appropriated to the University of Minnesota eight million dollars, plus two million dollars for buildings. The University of Illinois was appropriated for the last biennial, six and three-quarter millions, and then an additional appropriation for buildings. Here are some jottings. Take 1916, the appropriation of the state of California, and its normal schools, not the common schools, but its university, three million one hundred and sixty thousand dollars. In the next year, 1917, the same amount, and in 1918 two million two hundred and twenty-five thousand dollars. All of those institutions are receiving in addition special sums of money from other sources. Nearly every state institution charges a certain tuition and that amounts in many of the states to a much larger sum. For instance, the University of California receives from students' fees two hundred and eighty thousand dollars, from private sources one million two hundred and twenty-seven thousand dollars; Minnesota from students' fees, two hundred and seventy-one thousand dollars; the University of Wisconsin two hundred and ninety-one thousand dollars. What we aim to show by reading these figures—many more might be presented, but I do not want to occupy so much time—is that for higher education our state, of which are so proud, is not doing as well as other states of the Union. You may say perhaps in reply that these are state institutions, state-controlled institutions, and the highest institutions of learning to which the state is contributing generously are not so controlled. True, they are not state-controlled institutions. I ask your indulgence for a moment while I trace briefly the history of the University of Pennsylvania, because higher education, because education of an academic character begins there. It was in 1740 when this charitable school was founded. In 1749 the academy was

attached to the charitable school. In 1751 to 1755 the college was added. The college, the academy, the charitable school, and then in the early period before the Revolution we find the University of Pennsylvania was sending teachers into the outlying districts of this province to reach the boys and girls without any expense to their parents. In 1755, it received its charter to confer degrees; in 1776; no, I will not speak of that period. In 1779, what happened? That little institution which was doing the highest grade of work in the state, and which was helping the education in the lower grades through the provinces, what happened to it? The assembly of this state sequestered its charter on the ground that it was not true to our little government, and for ten years there lived in those buildings in Philadelphia, used its money, what was called the University of the State of Pennsylvania. At the expiration of ten years the same assembly, the successors of the men who were there in 1779, feeling that the act was an unjust one returned the buildings and such money as they had left to the college, as it was called, the academy, and the charitable school. There existed then in Philadelphia that college of Philadelphia, let me call it, and the University of the State of Pennsylvania. Two years sufficed to demonstrate to both parties, to both interests, that they could not exist side by side, and so the University of the State of Pennsylvania swallowed the college and the academy and the charitable school, and on the thirtieth day of September, 1791, there was born what is today the University of Pennsylvania. In that University of the state of Pennsylvania, who were the officers? Why, the Governor of the state, Joseph Reed; the Attorney General of the state, the Treasurer of the state, the Auditor General of the state, the Speaker of the House, the President of the Senate, plus clergymen and laymen, and so on; and the little college had its own board. But on the thirtieth day of September, 1791, the legislature said that they had a plan of union for these two institutions, and it was put before the assembly of the state and adopted. I have it here, but it is rather lengthy. Now, to preserve the connection between the University of Pennsylvania and the state of Pennsylvania, there is an article here which tells us how His Excellency, the chief executive of the commonwealth, was to be the president of the board of trustees of the united institutions; that in the case of his death, the trustees of the university could not fill his place; and so he was the connecting link between the state and the university. The legislature permitted those two institutions to select first one and then another from the boards of the two institutions, and in addition, to emphasize the connection between the universities and the state, His Excellency the Governor was made the president of the board of trustees of the University of Pennsylvania, which was annually to present to the legislature of the state, or to persons indicated by the legislature, a report of the income and expenditures. Now, there is some connection then between the university and the state. Just as a matter of interest, Mr. Moore was good enough to go back and look over the records, and he has given me this paper, which tells about the various appropriations made to the University of Pennsylvania. He has jotted down as the first one in 1807. Strangely enough, last week in looking over the life of David Rittenhouse I came across a record telling how the assembly of the state appropriated five hundred pounds for an observatory. David Rittenhouse, who was professor of

mathematics in the university at that time, thought it might be used for the dissemination of astronomical knowledge through the state and through the commonwealth.

There is a list of appropriations from 1807. The first one was for the establishment of a botanical garden, and we have that botanical garden today. The amount appropriated was three thousand dollars and the amount approved was three thousand dollars; then in 1832, and again in 1840 and 1850, 1860, and then in 1872. The amount in 1872 was to establish a general hospital and the state appropriated two hundred and fifty thousand dollars, approved two hundred and fifty thousand dollars; in 1873 another one hundred thousand dollars, provided the university authorities would give one hundred thousand dollars. If anyone cares to see this record it is here. I have not had time to have it duplicated, but the point is, after the union of the early institutions, the College of Philadelphia and the University of the state of Pennsylvania, under the new name of the University of Pennsylvania, the state from 1791 down to the present, has recognized its relationship to that institution. I speak of it first because it is the oldest of the institutions of higher learning. There are others in this state doing splendid work, each in its own peculiar line. But I ask you to think a moment, has not the university been of some consequence to the state? It was in the university that medical education began on the third day of May, 1765. When we speak of medical education in the United States, we go back to that time. It began in the University of Pennsylvania. The teaching of law in connection with the university or college began in 1791, in connection with the University of Pennsylvania. Now, if you choose to come down that line of medical education, let us pause for a moment to consider the men who came out of that school; each has done honor to our state; and consider what they have given to humanity. Joseph Leidy and D. Hayes Agnew. In our own time think of the Peppers, William the first, his son, the provost from 1881 to 1894, those giants in medicine serving not only their city but the state and the nation. So it is in law. Go over into the Governor's office and look at the portraits hanging around the wall, where his portrait will hang. It will be associated with the graduates of this old institution which introduced free education into the state when it sent out graduates into the outlying districts of the state for the sake of the boys and girls. How can we turn such an interesting institution to one side? I say, after careful consideration, that I do not believe there is an institution, an institution of higher learning in the state that the state controls—by state control is meant an institution all trustees or regents of which are appointed by the Governor or elected by the people—and here is a senatorial report on the relations of State College to the state. But just one or two sentences, Mr. Attorney General. They went through the whole history of the college, and they write something like this. "It, therefore, is the finding of your committee, respectively, that said college was chartered by an act of the legislature of Pennsylvania, approved February twenty-second, one thousand eight hundred fifty-five, as a private corporation." On the next page, among the conclusions is: "In view of all the laws now in existence in any way governing the Pennsylvania State College, your committee finds the institution a strictly private corporation." The University of Pittsburgh received in 1790 five thousand dollars,

to help it in doing what? Getting teachers, supplying books, and so on. It received aid afterwards from time to time. We cannot find wherein the board of directors of State College have ever turned over to the state of Pennsylvania in fee simple the estate now held, owned and controlled absolutely by a private corporation. So there we are, all three institutions in the same boat, all three doing work of which the state may well be proud. Michigan has a state university. Michigan has its college of agriculture, a school of mines at Houghton, three large well-attended institutions. The same is true of Kansas, and many of the northwestern states.

Now, sir, I want to thank you for your attention to my remarks on these three points on education in our state. Let me add that some school districts are very poor. You heard that they were going to close their schools. They cannot afford the buildings, they cannot afford the teachers. Some school districts are well off, some are parsimonious, very stingy, and they would like the state to do everything. Now, there may be a way discovered to remedy this. Senator Fisher has indicated a way by which these lagging districts could be brought to a realization of what they should do. Then about the normal schools which are the teachers preparing schools, this sum is not too much. Suppose now the eight millions for higher education were divided by three. Then it would be a little over two millions for each for the biennium. State College I think received about a million and a half, and we received a million three hundred and twenty-four thousand dollars. I do not remember what the University of Pittsburgh received. It is not going beyond what has been done, not very much. I do not believe if this third section prevails in regard to the institutions of higher learning that the relation of the State College to the Federal government would be in the slightest affected. Every bit of that which now comes from the Smith-Lever bill, and so on, would continue to be hers. All that comes from the Morrill Land Grant bill would be hers. In considering this I trust that the members of the Commission will realize the seriousness of the whole thing. The education of the people of the state should begin at the bottom, and if we could have that done for the elementary schools that I believe the state can do, and I believe we will do some of these days. I would like to see it now, this minute. We need not worry much about the higher education. Our farmer boys and girls are clamoring so that we would all hear and we could not refuse their demands. But this new course does another thing, it provides the dollars that are much needed today. The teachers are rising up in all parts of the state, all parts of the country. You know it, we all know it, and salaries are included in this gift of the state to the public schools as well as buildings and equipment, and so on. I thank you, sir.

Mr. THORPE. Mr. Chairman: I wish to move a substitute for the report of the committee, which I will send to the Secretary, and upon that report to make some remarks with the permission of the Committee.

The CHAIRMAN. The report will be received and read by the Secretary.

The Secretary read the report as follows:

ARTICLE X.

EDUCATION.

Section 1. The general assembly shall provide for the equipment, maintenance and support of a general system of education, including institutions for the education and care of the deaf, dumb and blind, ascending in regular gradation from the primary grade and district schools, including high schools, to the university, wherein the children and youth of the commonwealth may be educated, and shall make appropriations toward the support of this educational system. Normal schools, the University of Pennsylvania (chartered 1740, rechartered 1791), the Western University of Pennsylvania, known as the University of Pittsburgh (chartered 1787, rechartered 1819), and the Pennsylvania State College (chartered 1855, rechartered 1863) are and are hereby declared to be a part of said system of education, their respective charter rights are hereby confirmed, and for the maintenance and support of this educational system the general assembly shall make adequate appropriations.

Section 2. No money raised by taxation or otherwise available for educational purposes shall be appropriated to or be used for the support of any school, college or university owned by or under the control, in whole or part, of any church or denomination, or in which any church, denominational or sectarian doctrine or tenet is taught.

Section 3. Men and women alike shall be eligible to any office of control or management under the school laws of this commonwealth.

Mr. CARSON. Mr. Chairman: I second the substitute.

On the question,

Will the Committee agree to the substitute?

Mr. THORPE. Mr. Chairman: May I ask if the assistant Secretary will be kind enough to distribute the chart that was made in connection with educational provisions?

The CHAIRMAN. It may be informative to the Commission if the Commission knew what appropriations are made, and what the total revenue raised for education in the state now is. I happen to have those figures before me. The appropriations for 1919, the general appropriation to common schools, is twelve million dollars, of which ten millions are general funds, and a special fund of two million dollars. The total taxes levied in Pennsylvania for the support of the common schools for the year 1919, as I have it from the Department of Education is in round figures fifty million dollars. The total appropriations made to normal schools in the appropriations of 1919 were four hundred sixty thousand dollars, and six hundred seventy-five thousand dollars for the purchase of normal schools. The total appropriations to college and universities for the years, 1919 and 1920, were three million one hundred eighty-one thousand dollars; and the total tax levied on all school districts, not including Philadelphia and Pittsburgh, was thirty-five million dollars. The total tax levied in Philadelphia and Pittsburgh for school purposes was fifteen million dollars.

Mr. THORPE. Mr. Chairman: It is with no purpose on my part to intimate any difference of opinion as to the importance of the subject discussed by my distinguished friend, the provost. It is merely on this occasion to bring home to every man's mind some of the large and fundamental questions that are involved and which affect us as a commonwealth. If you will be kind enough to look at this chart you will notice that it is a summary of one hundred American state

constitutions. I will say for my friend from Philadelphia that, while this is a bird's eye view, it is not a treatise on ornithology. It was a very suggestive fact in looking over this chart, when I came to get it together, that the first use of the word "university" in connection with an American state was made by Pennsylvania. I think that will be rather a surprise. If you will look at the chart you will notice that the figures which the public printer has inserted in the squares correspond with the essential facts in the notes at the bottom of the page. There is a figure "1" and turning to that figure in the note you will observe the significance of the reference that Pennsylvania in the year 1776, that is the year of the Constitution of 1776, makes the provision in note 59, "all useful learning shall be duly encouraged and promoted in one or more universities." The figure in the parenthesis following "(3091)" is the pagination of the compilation known as "American Charters, Constitutions and Organic Laws" published by act of Congress, of which I have the honor to be the editor. You will therefore notice, my friends and fellow-citizens of Pennsylvania, that it is our own state, first in the history of the world as far as I am able to learn, that made some attempt to recognize the importance of education in one or more universities. Mr. Chairman, in my studies and residence abroad I have not been able to discover that the universities of Europe, either of Great Britain or on the Continent, contribute very greatly to the public welfare of their common people, but in my limited knowledge of history of earlier times I have yet to learn that in Rome or Greece or medieval times the beneficiaries of higher educational institutions were other than a favorite class.

If I am correct in my deduction, it is the members of favorite families, particularly families who intending that their children should be in the church or in high diplomatic circles were the persons who patronized and derived benefits from the so-called universities. It was left to America, it was left to our own country to devise, to apply the idea that education, as Horace Mann once said, is the chief defense of the nation, and is for the benefit of all concerned. Mr. Chairman, a little glance at this somewhat trite and dusty compilation will call to the eye the acts of Congress as well as the fundamentals of the state. Where the "E. A.," the "N. E. A.," or "S. E. A." occurs it means an enabling act of Congress. From a very early day, Mr. Chairman, our national government provided for public education. The ordinance of 1787, quite early in our history, and similar ordinances made careful provisions for this. New England at an early date made some provision for schools, not public schools in the sense in which we have them, but so-called public schools. As I understand, Mr. Chairman, even Harvard and Yale were not started for the benefit of the public. They were started really as theological schools for the training of ministers and preachers. We, therefore, must come to a new idea of education when we talk about the relation of the state to education. I am not going to attempt to trespass on your patience by calling your attention to the importance of the subject. We are all the products of the schools. Suppose, Mr. Chairman, we were to hear by telepathy or telegraphy, and some persons say that communications are coming from other worlds than ours at the present time, that the inhabitants of Mars were contemplating a general system of education, I think we could conclude they were acting in a very sane and hopeful way. Education, Mr. Chairman, does

not mean entirely training in the technical subjects of law, medicine and theology. It includes a larger preparation which none of us can define. Let us be honest. Education is not entirely an assurance, for highly intelligent people may do the wrong thing. I witnessed in Germany, and you know from your residence there and your studies, that a system of education can be deflected to ends which may not conduce to the safety and welfare of the state. Intelligence does not mean morality. I remember once visiting a penitentiary in the state of New York, and the star prisoner was a graduate of Harvard. He was a very skillful counterfeiter. I never thought less of Harvard, but I did think something less of him. It does not mean because a man is highly educated he will be a pillar of the state. It does not mean that simply the conferring of a degree by the University of Pennsylvania is going to produce model manhood or womanhood. That does not follow; but somehow or other in the history of the world, I think we all agree, common intelligence does make common stability. In the days of the Greek Republic, we all know what education was, for example. Pericles must have been a highly educated man. I do not know whether he had a diploma or not, but he certainly never went to the public schools. Dr. Franklin never went to public schools. He was one of the founders of the University of Pennsylvania. Dr. Franklin boasted that he had been honored by a university degree. He was a clever old gentleman. He was conscious of his own ability, and as an humble man in life he was very proud of his academic title. Washington writes a beautiful letter to the president of Yale, in answer to a communication, telling him that the university is going to confer upon him the degree of Doctor of Laws. I do not suppose George Washington or Lincoln would have been made greater men by any collegiate or academic degree, but somehow or other, if in Lincoln's time a great part of our population had not been properly educated, I am afraid that things American might have gone wrong. We are confronted at this moment by a like situation. I have cut from a paper of last evening an article which must have attracted your attention, "Americanization Bill is passed by Senate pledging co-operation in solving problem of illiteracy."

My learned friend, Judge Reed, stated early in the session that there should be some test of Americanism to be a citizen. We all feel that way. In the committee of which I happen to have the honor to be the chairman there was some discussion of the literary qualifications desirable in order to become a citizen, and yet the distinguished gentleman, Judge Gordon, very promptly tells us you cannot be any better citizen in French than you can be in English, in Greek or in Latin. The literary test is something deeper than that. This education which you as Commissioners are asked to consider in making up the fundamental law goes to the very life of the commonwealth. I wish to call your attention to several matters in which I do not say I differ with the distinguished provost, but I rather supplement what he has just said. I shall not attempt to be, even if I could be, strictly logical in the presentation of point after point. Time is important. I am not talking to men who do not know, because it is not one of the affairs that happened in a corner. There are certain objections to the report of the committee which go far in my opinion to warrant its rejection. The first

defect is the specification of the amount that shall be appropriated. Mr. Chairman, as Patrick Henry said, "Experience is the light that must guide us." I turn back to the debates in the convention which gave us this Constitution which we have, and you know better than I the character of the men who proposed it. I find in the discussion of the question of appropriations for the support of public education some remarks concerning the million dollar matter that is mentioned in our present Constitution. One member from Chester county, Mr. Darlington, said: "We have made in the second section, it will be perceived, an appropriation for carrying into effect this system of free schools in the state. Whether this will be deemed wise by the Committee of the Whole and the Convention remains also to be decided. It is higher than the appropriation made up to this time, as the Committee on Education had named the sum of one million dollars." It was seven hundred thousand dollars at that time. I once had the pleasure of conversing with the vice-chancellor of Oxford, afterwards Bishop Chevasse, and we spoke on many matters of education. He said, a curious thing which I think is borne out by economics, that when the foundations at Oxford were made centuries ago, these benefactions were made in stone or quintals or pounds of wheat, and that in the long course of time there is less fluctuation in the value of a bushel of wheat than there is in that of the dollar. Mr. Chairman, the serious objection to saying that the legislature shall do this or shall not do this, or shall do that or shall not do that, is that the value of a dollar cannot be anticipated. Eight million dollars today is really no more than four and a half or five million dollars of a few years ago. What will be the value tomorrow? What will it be fifty years from now? I think we ought to leave the legislature perfectly free in these matters to act up to the requirements of the occasion, not binding that body much or little, but to leave the amount of appropriations to the common sense and judgment of the men who form the legislature. If we cannot trust them, then I think that we might as well lose our faith in the commonwealth. I might quote another speaker on this subject, he is familiar to many of you by name, Judge Woodward, in which he says: "It is a violation of the duties that are assigned to us." He seems to think that the fluctuation of money is too serious to permit of specifications of any amount. Those who are familiar with constitutions in force are aware that it is not an unusual thing for the salaries of governors to be fixed by the Constitution, or the salaries of the secretaries of state, attorneys general, and so on, and then sooner or later these constitutions must be amended; for it is absurd to fix the salary of the Governor at two thousand dollars as it was at one time in Michigan. We must face the fact that the Governor has to live just like other people.

I wish to call your attention to a very large thought which is involved in this, and it is familiar to you. It has been presented and discussed. Among the eminent Philadelphians in the Constitutional Convention of 1873 was Senator Buckalew, and in speaking of the Constitution as it now stands, he said: "No money raised for the support of the public schools of the commonwealth shall be appropriated to or used for any sectarian school." He quotes or refers to eleven state constitutions. He says: "The foregoing provisions, in various forms, expressly prohibit the appropriation of public money to sectarian uses, or the diversion of school moneys to such uses, or sec-

tarian instruction in schools supported by taxation or by public funds." Those of you who recall the very first article amendatory of the Constitution of the United States will remember that Congress is forbidden to make any law respecting the establishment of religion. An appropriation of a dollar to denominational schools is a law in support of religious denominations. The state in this country is entirely distinct from the church. The church and the state have their respective functions. There was a time when their functions blended, and then there was a time when after great agitation their functions were divided. I appeal to you as a basis from which we must not depart in principle that whatever we do with public money, we must see to it that for educational purposes, where we reach the minds and souls of men and women, we are not justified in appropriating a single penny for a denominational purpose. It is different in a hospital. Some weeks ago it was argued here that benevolent institutions, though managed by denominations, should be recipients of public aid, but we separated the educational from the benevolent. There is a great difference, Mr. Chairman, between the beneficiaries of the appropriations in the hospitals and the beneficiaries of the appropriations in a denominational school, a very great difference. I think then, Mr. Chairman, that we have some principles here upon which we can agree. There is another matter which though not proof is contributory proof that you have before you a hundred instances of the kind. You have before you the practice of the country. You will notice, Mr. Chairman, that we have mentioned three historic institutions of the state. I have taken great pains, and I think I am persuaded—I have taken great pains to consult some learned friends in other parts of the state. What is the objection to naming the University of Pennsylvania, the University of Pittsburgh, or the Pennsylvania State College in the Constitution? What is the objection? There is no objection at all. In discussing this matter not long ago with certain gentlemen, the reply was, "Well, it looks as if you were picking out some institutions and leaving out others." Well, I thought to myself, that is a pretty strong popular objection, but it has occurred to me, as doubtless to you, that there is not a state in the Union, I am happy to say, in which there are not more than three institutions of higher grades. And there is no state institution in any of our states which does not have some merit for being a state institution. For example, in this report of the Commissioner of Education, we have a list of all the so-called colleges, technical schools, including agricultural and mechanical and law and medicine. The theological schools are separate. We have forty-four in this state. Mr. Chairman, we know that as a matter of fact in human life, not everybody who runs the race wins, and not everybody who wins the race runs. We know that there is a law of nature that there are some who receive and some who do not. You know you cannot benefit all the beggars you meet on the streets of Naples, or you would not have enough to go around. You know that in every state, private enterprise, private initiative, private affection for mankind, starts these educational institutions. I was educated in part in a denominational school. It has been my privilege to be educated in the University of Pennsylvania, where I spent a number of years. I also spent a number of years in the University of Pittsburgh. I happen to be the only member of the Commission who has had experience in

both places, and I have some familiarity with the history of both institutions, as several of my friends here know. What has Pennsylvania, what has Pittsburgh, what has State College got? What is it doing that gives either of these institutions a claim over forty-one other institutions in the state? We do not approach the question in that way, we do not approach it by comparison of excellence; we approach it from the practical question of service rendered to the state. You have an opportunity, Mr. Chairman, to choose a profession in life. You choose one that you think is best adapted, so far as you can see, to the ends that you plan or somebody plans for you. You plan the education of a minor or plan the education of society or a community and you draw up a scheme that you think will conduce to the greatest good. The provost has impressed us by a statement of facts of the services that the University of Pennsylvania has rendered to the commonwealth. In the first Constitution of this commonwealth, and in the second Constitution of this commonwealth, if you turn backward you will discover that recognition is made of these institutions. In the Constitution of 1776 they are called universities, and in that of 1790 they are called seminaries. Mr. Chairman, both of these institutions, that of Western Pennsylvania and that of the University of Pennsylvania, were organized under the first Constitution of Pennsylvania—the University of Pennsylvania, of course, under its present charter of 1791, was existing in 1776, the University of Western Pennsylvania, under its charter of 1786 and its present charter of 1819. We are moved by the precedents the learned provost has referred to, that the legislature from time to time has made appropriations. I could with equal accuracy call your attention to the fact that the legislature has done the same thing for the University of Pittsburgh. As early as 1826 it made an appropriation, and it has made many appropriations since that time. It is not necessary to say when; it is sufficient to say that there was a recognition of services rendered. What is the service that a higher institution renders? Shall these three be picked out as the only ones in Pennsylvania that do it? Oh, no, that does not follow. But there is a limit to the power to support and to the aid given. You say historically the University of Pennsylvania is the first in the commonwealth. In many respects it is the first in America. Historically the University of Pittsburgh has a claim upon the consideration of the commonwealth. Why? There will always be a city of Philadelphia, and there will always be a city of Pittsburgh, and there are some things you can do in Philadelphia and in Pittsburgh that you cannot do at State College, and there are some things that you can do at State College that you cannot do at Pittsburgh or Philadelphia. Our state is a sort of triplicate affair. When you move to Altoona by train you pass through beautiful country. Beyond Altoona we pass to regions gullied and gashed, and yet every one of us knows that the western part of the state is teeming in wealth.

We have in the state of Pennsylvania a composite population, a population as great as that of twenty-two other states together. I remember I was in London when its census was taken, and it so happened that the population of London at that particular time was the population of Pennsylvania. It will not be long before we have a population many fold greater than the present. We are not making this Constitution for our benefit. It cannot be long before all of us

will pass away. It is for the benefit of our successors. Pennsylvania is made up of a foreign as well as of a native-born population. It always will be. It cannot escape the conditions that nature has placed upon it, and its people are entitled to the best. I was moved with admiration by what the provost said concerning the demands for public schools; but here, Mr. Chairman, is a serious question. How far can you go? Can you assume to pay as much to the local schools as the schools raise by local tax? I have been paying school tax for a good many years. I am the product of the public schools, of the seminary and of the university and college, and I have had very much the same experience as the rest. For the last twenty years I have been paying school taxes. I get no immediate benefit from that tax. I have no children to send there. Shall I say it does not fall upon me to pay that tax? Oh, no. We reason that out *pro bono publico*, to the benefit of society. There is not one of us that would invest a penny in a county or a city in any plant or manufacturing industry unless there was a church spire or a school somewhere near. You say, "Excuse me, I do not want that kind of environment." You would like the environment of education and morality as a proper environment to protect your interests. There is no doubt that we should have an educational system. Now, Mr. Chairman, the state of New Jersey is not in this list because New Jersey makes no provision, neither does Tennessee, in its Constitution for an educational system; yet Nashville is the seat of many schools, and Princeton is at Princeton. The provost has just told us that New Jersey stands higher than Pennsylvania in education. It does not follow that because the Constitution omits some statement concerning higher education that there is no provision for it. As a state at this present time we are facing the new era, that new era which means more I think than any of us can fathom. Are we to say the chief defense of the state is going to be in armories, is going to be in machine guns, is going to be in hygienic procedure, is going to be in opportunity for wealth, is going to be in the police system, mounted police, and what not? Will such equipment take care of Pennsylvania and our boys and girls? Are our girls and boys coming along with notions instilled in their heads perhaps as serious as those we read in the New York Times on Sunday, reported to us by those of high rank concerning thousands and thousands of children in Russia who today are under instruction which means violation of the very principles of the state? Mr. Chairman, you and I could be taught very wrong in political matters; you and I could be taught very wrong in moral matters; you and I could be taught very wrong in almost anything, and we would believe it to our dying day. Why, Mr. Chairman, did Germany act as she did? Because she had been educated to do so. I have lived in Germany, so have you. They thought they were right. They do not see this error yet. I have yet to read in any communication, I have yet to hear by any word of mouth, from any person who is qualified to state that the Germans thought they were wrong. If so, I stand ready for correction. Why, gentlemen, I remember in the German schools of hearing instruction to that point. It was rather galling to me to hear it, but I heard it—the violation of the principles of democracy were taught, but they were not a violation in their eyes. It was the gospel of Prussianism, the gospel of world-wide conquest, the gospel of universal triumph. We do not teach that gospel. The fundamental idea of

government in America is the supremacy of the civil over the military authorities, and we believe in teaching that way. Every man here is a citizen. Every man here is a soldier. We are not citizens because we are soldiers, we are soldiers because we are citizens. We are here to stand for certain ideas of justice and right to all men. What have these three institutions to do with that subject? I would call your attention, and I have some copies here for distribution, to what has been done in Pennsylvania in the University of Pennsylvania for the service of education in the state. The provost could speak at length of the service of the University of Pennsylvania in teaching the teachers of the country. We have had a remarkable experience in Pennsylvania and in Pittsburgh, very remarkable. If anybody doubts it, I will just give the figures; in engineering, dentistry, medicine, pharmacy, all along the line. Would you say, for instance, that institution that is not helped by the state has done nothing? Is Pittsburgh or is Philadelphia particularly well located to do a particular thing? I say, yes. Where could engineering better be taught than in an engineering environment? Where could agriculture better be taught than in an agricultural environment at State College? At the State College a school of education cannot; the college is not located at the right place. You can go to a big school of education in Philadelphia and you can go to a big school of education in Pittsburgh, but you cannot have such a school at State College; you can have some things in State College that you cannot have in Philadelphia; and you can have some things at State College that you cannot have in Pittsburgh. The safety of the state is the purpose of government; and the government has no excuse for being unless it continues the state. Constitutions of government are made to endure for ages to come. In this Constitution that we are making, this Constitution that we are working out, we are doing something for the benefit of all concerned, and the greatest good for the greatest number. This university and that university wants to be a beneficiary. When the provost signs a diploma, that does not mean that that man will never go wrong. Recently State College graduated a splendid class. Judge Mitchell in addressing them paid a beautiful tribute to the service of the men in the army, to their returning to become more familiar with the practical affairs of life—a beautiful tribute. Now, those men go forth and mix in with all sorts of conditions and carry with them ideals worth carrying out. That is what a university is for. I once heard President Garfield say that he would learn more sitting on a log with old Mark Hopkins than anywhere else. I remember professors of the University of Pennsylvania who conferred upon me an inestimable gift, and established my ideals in life. There are some of them still living. I remember that the best teacher I ever had was a woman, who long since went to the better country, but nevertheless she had the true spirit of inspiration, and that is what higher education is for.

Now, Mr. Chairman, in conclusion, in this aspect of things, need I beg you to understand that I am not standing here in conflict with the aspirations of my distinguished friend the provost. The purpose is to bring home to every man in this Commission that he has a sacred duty that he owes to the commonwealth, to make it possible for every boy and girl to get some sort of vocational education. Why has Congress recently come to the front, though rather

slowly, with its plan for vocational education? What has it been doing in recognition of the great service of higher education? Shall that service be given to every school of high grade in the commonwealth? You say, no, you cannot afford it. Shall it be given to the best? Well, we are not here to say which are the best. Shall we consider geographical locations? Shall we consider history? Shall we consider services rendered? That is the point. There are some places which by nature are located for the benefit of a great number. There are other places located by nature where they can be of little service. I therefore think we are justified in offering in this tentative organic law to our fellow-citizens the historic equipment in the eastern part of the state, in the central part of the state, and in the western part of the state, that will enable the state to train twenty, thirty or forty thousand people. It is not a question of numbers; it is a question of equipment. The learned provost has eleven thousand students; he would not object to twenty-two thousand, or thirty-three thousand. Mr. Chairman, it is a question of opportunity just exactly as Emerson said years ago. It is a question of opportunity. Are you going to open up the opportunity? You do it in the lower schools, but do not stop there. I venture to say that you and I were not very differently brought up. We come perhaps from very old families, that have been in this country perhaps for centuries, but we were not born with golden spoons in our mouths. We had to pass through the experiences of limitation and trial. What we are, we are as the result of education, made possible to us by the beneficence of the past. Now, shall we do less for posterity than our ancestors have done for us? Mr. Chairman, the admirable plan that the provost has suggested should be supplemented by a larger plan that shall recognize these large historic institutions and put them on the map as other American states have done and are doing. We have taken care of them in the past, we will continue, of course, in the future, and we will take care of all the rest so far as we can. The adequate support of the three historic institutions does not exclude the rest. We will do it if we can. But there is a financial limit. You cannot do more than so much in education; otherwise the state will be bankrupt. The state cannot afford to exceed its resources.

Mr. Chairman, I hope that the suggestion by way of amendment that I have made will meet the approval of the Committee.

Mr. GORDON. Mr. Chairman: Very much that I intended to say has been said by Dr. Thorpe more ably and attractively than I could have said it. I think the address of Dr. Smith is proof of the proposition that a high grade of intelligence and technical relation to the education of the higher order has no effect in abetting an almost universal attribute, and that is an avidity for grants of public money which grows upon what is received. I had never expected to have seen in a body such as this any proposition so thoroughly radical and revolutionary in the policy of the state as to education presented from so high a source. I shall confine what I have to say briefly to a statement of just what this amendment proposed by the committee does. In contending with the proposition in the Constitution that the legislature may make appropriations to educational institutions not under state control, the third clause of this amendment provides that the legislature must make appropriations to educational institutions not under state control. It puts the privately controlled insti-

tutions on an absolute equality with the public schools. The public school is provided for, and there is a provision in this projected report that there shall be an appropriation equal to the amount received from other sources for the public schools. And then comes the provision that certain institutions of higher learning shall have a proportionate appropriation to the money they receive from other sources, that they shall have compulsorily appropriated to them a definite sum of money, eight millions of dollars every two years. Now, I do not believe that that can be defended upon any principle which should govern a democratic state in these days. Every argument of Dr. Smith with respect to the appropriations for public schools is an argument against this clause for the appropriation of eight million dollars to privately controlled schools. I would go as far with him as he would choose to go, and go farther even with respect to appropriations to the public schools, and I would proceed, if I could accomplish it, very much farther than where we are now with respect to appropriations to private schools. Under no circumstances would I put them on an equality with the public schools; under no circumstances would I vote for a provision in the Constitution that eight millions of dollars must be appropriated to institutions of higher learning, controlled by private citizens and in no way subject to the control of the state. Dr. Thorpe has made an admirable address upon the fundamental principle as to what education the state owes to its citizens and what the form of education is, what the nature of education is, which is supposed to be the chief defense of nations; not the higher scholastic education, which is the consummate flower of the university, but the education which gives general enlightenment as to principles of government and the fundamentals of morals and duties of citizenship, and also those current matters with respect to literary education, if I may so term it, which is necessary for the ordinary vocations of life. The other higher education, beneficial as it is, necessary as it may be even for the state to establish such institutions, valuable as it would be as an adjunct to the public school system, ought not in private hands be made the subject of constitutional amendment. I repeat, Mr. Chairman, that it is absolutely revolutionary in our attitude toward education in the commonwealth; it is putting private education on an absolute equality with public education, and making it compulsory that certain schools or certain classes of institutions of higher learning shall have appropriated to them the vast sum of money named in the last clause of the report of the committee. What Dr. Thorpe has said with respect to those two particular institutions I do not now debate. I am confining myself only to the report of the committee, that which is on the calendar. I shall vote against it. I trust it may not pass. The substitute offered by Dr. Thorpe has merit. Personally I should like seriously to consider it, certainly some phases of it. Whether I could bring myself to placing on a par with the school system any privately conducted institution, I do not know. I think I could not. If the University of Pennsylvania was to be so treated, I should want to see very much more of state control cast around it, very much more control of the money which went into that institution, and the method by which it would be spent, and the quantity of free education which was to be given in return for the public funds. I content myself for the present by

saying that I think that the third clause of the report now under consideration should not pass.

Mr. PEPPER. Mr. Chairman: I move to amend the proposal of Dr. Thorpe in the following particular; to substitute for section 1 the following: "The general assembly shall provide for the maintenance and support of the general educational system, comprehending all grades from the primary schools to the university, and shall make adequate appropriations therefor." If that is seconded I would like to say a word in support of it.

Mr. THORPE. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: I am opposed to the proposition of writing the name of any specific educational institution into the Constitution of the commonwealth. I do not see any good that can be accomplished by so doing. I think that there is much harm that may be done. In the first place, motives may be misinterpreted, jealousies may be aroused and discrimination charged. I should be very reluctant to have the work of the Commission in framing a proposed Constitution for the state complicated and perhaps later jeopardized by a spirit of criticism or hostility that might be engendered as between those who are loyalists to various educational institutions, whose prejudice is only less acute than the *odium theologum*. Another reason I am opposed to writing this or any other educational institution into the Constitution is because I for one do not believe in crystalizing to any degree the present educational system of Pennsylvania in such fashion that the thing will be permanent. I find very little constructive thinking on the subject of education in Pennsylvania. There are applications for appropriations for particular institutions. There is a general realization that teachers are underpaid, that school terms are too short, and that Pennsylvania's place in the scale of commonwealths wherein efficient educational training is given is a very unworthy and regrettable one. But nobody seems to me to be thinking about the solution of the educational problem in Pennsylvania in a comprehensive way. I have what perhaps is no more than a dream; but I have a dream of an educational system in Pennsylvania worthy of such an empire as this. I should like to see a University of Pennsylvania functioning in Philadelphia and in Pittsburgh, made up of great graduate schools of law, medicine, engineering, agriculture, dentistry and veterinary medicine, with its agricultural department at State College, the university to be definitely related to the public school system of the commonwealth, in that there should be in each of those cities the crown of a public school system of the community, something like the College of the City of New York, the College of Philadelphia and College of Pittsburgh. Then I should like to see all the colleges of Pennsylvania fitted into the university establishment as the colleges of Oxford and Cambridge bear relationship to those universities, so that every college in Pennsylvania, while autonomous and left free to pursue its development according to its specific genius and ideals, would be so definitely related to the educational system of the state that much more academic intercourse than now takes place would be the order of the day. It would no longer be either possible or necessary for bright particular stars in the educational firmament

to be claimed by single institutions. There might be a common enjoyment of talent as between institutions and a very much greater inter-communication in the world of education and of letters than anything we have so far realized in this commonwealth. We have many and great educational institutions in this state, but they are thinking of one another in terms of separation, almost in terms of rivalry, instead of being content to emphasize and upbuild at particular places great schools of a certain sort which could be the pride of the state, if we were all to get behind them and support them. The order of the day is to keep on duplicating all over the state little imitations of big things so that we have many small attempts at educational endeavor instead of a few great exponents of educational theory and practice. I would like to see the colleges of Pennsylvania fitted, as I say, into an academic family and crowned by the University of Pennsylvania functioning at both ends of the state, because it is idle to think that Pittsburgh will come to Philadelphia or Philadelphia will go to Pittsburgh; but a single university should function throughout the state with adequate exchange of professors, community of equipment and common use of endowments, and facilities of various sorts, and stressing particularly in the graduate schools, schools of education and the like, and closely related to the public school system of the state, in that there should be a people's college in each of those two great communities which should be the crown of the public school system, and at the same time an integral part of the university framework; and then let the colleges of the state find their place in the institution as do the colleges of the great universities of the Old World.

Now I have mentioned this, not because I wish to give at the moment any definite or concrete expression to the thought, but merely to support my objection to anything that seems like crystalizing in the Constitution our present fragmentary and unsatisfactory educational system. I repeat for that reason, as well as for the reason that I have first mentioned; namely, the danger of misunderstanding, misconception, rivalry and jealousy, I am opposed to the mentioning of specific institutions in the Constitution. It will not be supposed by anybody who knows me and my connections that this objection proceeds from antagonism to any of the institutions that are named. My people for many generations have been closely identified with the University of Pennsylvania. I am a graduate of two of its departments, and I hold its degrees and have taught there for twenty of the best years of my life, and I am a member of the board of trustees and a devoted friend of the provost; so that what I say will be taken in good part by those who differ with me. But I am convinced that it is a mistake to write particular institutions into the Constitution for the reasons given. I am convinced that we are yet in the rudimentary stage of thinking respecting the educational system of Pennsylvania. For these reasons I advocate an amendment to Dr. Thorpe's proposal which shall assert in simple language but clearly and definitely what I conceive to be the duty of the commonwealth towards education. I will read it once more if I may. "The general assembly shall provide for the maintenance and support of a general educational system, comprehending all grades from the primary school to the university, and shall make adequate appropriations therefor."

The CHAIRMAN. The Chair rules that if Mr. Pepper's substitute is adopted it takes the place of both Dr. Thorpe's substitute and the report of the committee.

Mr. ALTER. Mr. Chairman: Would it not take the place merely of section 1 of Dr. Thorpe's substitute?

The CHAIRMAN. I mean section 1 of Dr. Thorpe's proposal and of the entire report of the committee.

Mr. PEPPER. Mr. Chairman: I understood that the parliamentary situation was this: That Dr. Thorpe had offered a resolution which was in effect a substitute for the report of the committee and that it is that resolution that is before us, and my amendment was addressed to section 1 of Dr. Thorpe's proposal.

The CHAIRMAN. The Chair so understands and so rules.

Mr. CARSON. Mr. Chairman: I rise for the purpose of supporting Mr. Pepper's amendment to Dr. Thorpe's proposal and I should like to say a word or two of protest against the misunderstanding by some members of this body of the very earnest and zealous gentleman who is the chairman of the committee, who reported the amendment from Committee No. 5. I too, like Mr. Pepper, am an alumnus of the University of Pennsylvania and a member of the board of trustees. My father and myself were both graduates, my two sons are graduates, and before getting into the drift of general discussion, I wish to say that I interpret very differently from Judge Gordon the motives that led the provost to make his touching appeal. I do not interpret his appearance here and his earnest words as the bitter fruit of the unfortunate effects of education upon a mind zealous and earnest in the performance of duty by converting it into an avid appetite for public funds; not at all. I heard his appeal as that of an earnest and zealous worker in the cause of education, pleading for help, not in the interest of his own institution alone, but of all the little struggling creatures throughout this commonwealth who lift their eyes and their arms to the light and say give us education, give us something that will enable us to see, to feel, to touch, the right to live. It is not avarice, it is not an effort to lay unholy hands upon the taxpayers' money, it is not a desire to exclude the representatives of other public institutions from the function of administering public funds; not at all. It is because a great, earnest and big-hearted man, who has devoted so many of his most active years to the work of educating thousands of citizens drawn from not only every state in this Union, but from far distant lands across the sea, needs help, and the only question is, shall it be written into the Constitution that he shall have it, or shall his appeal be made rather to the legislative body instead of to the Constitutional Commission? If Dr. Smith's appeal had been made to a legislature, and this were a legislative forum, his appeal would be irresistible. I do not know the amount they would give him, but they certainly would very much increase his appropriation. He knows how hard it is, and all of us Pennsylvanians have wondered why it is that some Pennsylvanians draw their vast wealth from the very bowels of the state, from our oil wells, and our mines, and our furnaces, and then spend their money in aiding foreign institutions and ignoring their own state, and source of their wealth; but that is neither here nor there. Dr. Smith made an argument that should have been addressed to a legislative assembly. Many a time a judge on the bench listening to the earnest appeal of counsel says

that is a strong argument, that is a touching argument, it appeals to the heart, but we are clothed with judicial functions and not legislative power, and with the folly or wisdom of the act we have nothing to do. I do not want the provost to think that he has struck an unsympathetic body. I do not think he has, but we do not have the power to do that which he wants us to do. His argument should be addressed to a legislative body. It cannot be addressed to a constitutional body charged with the formation of the organic law. I agree with the suggestion which was read by Dr. Thorpe in quoting Mr. Darlington in the debate on a similar provision in the Constitutional Convention of 1873 that there ought not to be a pecuniary limit written into the Constitution, and not simply for the reason alleged that in the passage of time through the shifting value of money the sum there named will be grossly inadequate so that the eight million dollars for which Dr. Smith pleads may in the course of time amount to such a paltry sum that it will look like an object as seen through the reverse end of a telescope, and diminish in size instead of increasing, but because I believe there is no place in a Constitution to write pecuniary appropriations to any institutions at all. The Constitution is not an appropriation bill. That is not its principal function. It cannot be made in that way and it is for that very reason also, and in line with the same thought, that I agree with Mr. Pepper that the names of no institutions should be written into the Constitution. I believe an argument could be made that from the earliest days of the commonwealth under the guidance of Dr. Franklin, in the first place, and his successors in high office, the universities were really servants of the state. People forget, and they have to be constantly reminded of history. It will not be twenty years from now before the fact that Franklin was the founder of the University of Pennsylvania would be challenged, were it not for the demonstration which Dr. Thorpe made in a book which he published many years ago at the instance of the government at Washington of the history of the University of Pennsylvania, and the successive marks and steps in the argument have been justified by Dr. Smith's historical examination into the matter. A fact that ought to be kept constantly before the people of Pennsylvania is that one-fifth of the signers of the Declaration of Independence were all Pennsylvania men, and one-eighth of the framers of the Constitution of the United States were all University of Pennsylvania men. There are things which thrill the pride of Pennsylvanians and keep our blood in motion; but yet, at the same time, under the surge of impulse and emotional enthusiasm, we ought not do a wrong thing in shaping the Constitution and writing into it figures which in time will become insufficient, or write in names which may be indicative of the preference of our own particular generation, but which it would be hard to explain some fifteen or twenty years hence. I, therefore, think that Mr. Pepper has with admirable judgment summed up the general principle that "The general assembly" in its constitutional duty which can be very rigidly imposed "shall provide for the maintenance and support of a general educational system, comprehending all grades from primary school to university, and shall make adequate appropriations therefor." The only thought that I have in my mind is that to make it a little clearer, though I understand Mr. Pepper's meaning perfectly, that the words "school" and "university" should be put in the plural form, so as to

read for "primary schools and universities;" somebody in this state, as Judge Reed indicated, might not have a sound comprehension of the English language and might read these words in the singular number and not in the collective sense.

Mr. VOLL. Mr. Chairman: As a matter of information, being very much interested in the common schools of this commonwealth, during the course of Dr. Smith's address he stated, I believe, in 1919 twenty-four million dollars had been appropriated for educational purposes, nine million of which went to the common schools. Previous to that about sixteen million had been appropriated, eleven of which had gone to the common schools. Why the difference? Where does this difference come in, may I inquire, and where does this extra amount of money go to, as between the appropriations for those years and the last year when there were twenty-four millions appropriated?

The CHAIRMAN. The Chair is not informed; but I know some went for the payment of salaries of county superintendents, some to normal schools, and some for the building and purchase of normal schools, and the equipment of normal schools.

Mr. GORDON. Mr. Chairman: May I ask the gentleman from Allegheny a question which I would also like to ask the gentleman from Philadelphia who proposed making the insertion? The present Constitution states on this subject, page 57 of the Compilation, "Section 1. Public School System. The general assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this commonwealth above the age of six years may be educated, and shall appropriate at least one million dollars each year for that purpose." The amendment of Mr. Pepper following the language of the amendment of Dr. Thorpe says "The general assembly shall provide for the maintenance and support of a great educational system, comprehending all grades from the primary school to university, and shall make adequate appropriations therefor." I do not know whether the language "public schools for the efficient teaching of the children of the state" is left out with any particular thought or not. I observe that the report of the committee also omits the language of the present Constitution, "The general assembly shall provide for the maintenance and support of a thorough system of primary, secondary, and higher education by appropriating biennially," and so on. The word "public school" is omitted in all three of these provisions. It is true that Dr. Thorpe further along in the first article offers a provision that the schools "wherein the children and youth of the commonwealth may be educated, and shall make appropriations toward the support of this educational system," but the words "public schools" are, it would seem, with some studiousness omitted in all three of these articles. I think they ought to be restored.

Mr. THORPE. Mr. Chairman: Before accepting Mr. Pepper's amendment I would like to raise a question which has been emphasized by the heads of some of the schools for the deaf, dumb and blind. In justice to the twenty-three or twenty-four hundred deaf, dumb and blind children who are under instructions in these institutions in the state, or for the benefit of those on the border line in the public schools, but who really ought to be in such institutions, whether if Mr. Pepper's amendment is acceptable to the Commission it should not be provided that the system includes instruc-

tion for the deaf, dumb and blind; or whether it would be more pertinent to express that provision elsewhere in the Constitution. In my tentative remarks I did not discuss that question at all. I think before we pass to Mr. Pepper's substitute we ought to consider whether these institutions for the instruction of those who are infirm in sight, hearing, and so forth, should not be provided for just as much as those who are sound.

Mr. REED. Mr. Chairman: The amendment proposed by Mr. Pepper, following the thought of Judge Gordon, is so worded that it will authorize appropriations to private primary schools, or else it will not authorize appropriations to universities that are not under state control. You cannot give it one construction for primary schools and another for universities. "Section 1. The general assembly shall provide for the maintenance and support of a general educational system, comprehending all grades from primary school to university, and shall make adequate appropriations therefor." Now, I do not know whether Mr. Pepper means that appropriations to the universities shall be only to those that are entirely state institutions, or whether he means to give appropriations to primary schools that are conducted now under private auspices.

Mr. PEPPER. Mr. Chairman: In answering the question I beg to say that in my judgment there is no reason why the legislature should not impose upon a university or any other institution to which it proposes to appropriate such restrictions as it pleases as a condition of receiving the grant. It could if it pleased refuse to appropriate to the University of Pennsylvania or to any other institution unless the institution were to submit itself to such a degree of state control as the legislature might specify. There is no limitation expressed or intended in the proposed amendment on that subject. With regard to the other suggestion made I think the answer is that the thing provided for is a general system of education. That is to say the proposal is not that appropriations may be made to private schools which are not part of the general educational system of the state. With regard to the suggestion that Judge Gordon makes respecting the significance of the omission of the term "public schools" all I have to say is that the only reason that it was omitted in my draft was because I could not see very well how to work it in. It is an expression which has value, and I think probably it ought to be preserved in the Constitution, but the difficulty is that where we are dealing with a system which comprehends all grades of instruction, not merely that which we speak of technically as the public school, but which is intended to include also that which we call the normal school, and even to make provision for institutions of collegiate and university grades, it is very difficult to use "public schools" in its proper sense and still fit it into the general statement. I should be entirely willing to accept an amendment if Judge Gordon or anybody could suggest one which would give us the advantage of retaining the term "public school" in the fundamental law.

Mr. REED. Mr. Chairman: We spent hours of agony in protecting ourselves and the other citizens of the commonwealth from a predatory legislature who might be predisposed to make appropriations to hospitals and charities, and then we spent more time today protecting ourselves from the Governor. We are now confronted with an amendment under which it is possible for the legislature

without any limitation, but in the interest of a general educational system, to make an appropriation to a very excellent school, a primary school that happens to be within a square of my house, and with proper pressure might be able to get an appropriation from the legislature under this constitutional provision. If we are going to protect the state and Mr. McCormick and Judge Gordon from the legislature and the Governor so that their money cannot be applied to the relief of the sick and helpless, surely we ought not to allow their money to be taken for primary schools, no matter if they are run by an excellent lady.

RECESS.

Mr. FISHER. Mr. Chairman: I move that the Committee take a recess until 8 o'clock this evening.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 5.55 P. M., the Committee took a recess until 8 o'clock P. M.

AFTER RECESS.

The Committee reconvened at 8 o'clock P. M.

The Chairman, William I Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Committee of the Whole having arrived, the Committee will be in order.

ARTICLE X, SECTION 1.

The CHAIRMAN. The question before the Committee is on the substitute proposed by Mr. Pepper, or rather the amendment proposed by Mr. Pepper.

On the question recurring,

Will the Committee agree to the amendment?

Mr. SMITH. Mr. Chairman: After conference with my associates of Committee No. 5, I beg leave to withdraw the report and move to substitute article X in the present Constitution therefor.

The CHAIRMAN. The chairman of Committee No. 5 withdraws the report of the committee now before the Committee of the Whole and moves to substitute for any pending motion the provisions of article X of the Constitution as they are.

Mr. REED. Mr. Chairman: I second the substitute.

On the question,

Will the Committee agree to the substitute?

Mr. PEPPER. Mr. Chairman: I am very glad to withdraw my amendment to Dr. Thorpe's substitute. If this proposal is not to be pressed, I do not care to insist upon the amendment. The pending amendment had to do with Dr. Thorpe's proposition, but if that is to be displaced by the language of the present Constitution I should rather withdraw my proposal, if Dr. Thorpe's substitute is also withdrawn.

Mr. THORPE. Mr. Chairman: It is with great pleasure, responding to the evident wishes of the Committee that it be withdrawn, with one exception. I think, Mr. Chairman, the second section of article X is worthy of a little further consideration than has been given to it. On page 57 of the Compilation, it is said, "shall not

be appropriated to or used for the support of any sectarian schools." Now, that is not the word to use. The term "sectarian" is not comprehensive enough; the word "denominational" or something to that effect should be inserted. I withdraw my proposed amendment.

The CHAIRMAN. Then as the Chair understands the parliamentary situation, Dr. Thorpe's substitution is withdrawn, Mr. Pepper's amendment is withdrawn, and the question before the Committee of the Whole is on the adoption of article X of the Constitution as it now exists. There are no amendments pending.

Mrs. MILLER. Mr. Chairman: I would like to make an amendment, by adding after the words "public schools" or insert between the words, "public schools" and the word "wherein" the words "including schools for the deaf, dumb and blind."

Mr. REED. Mr. Chairman: I will second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. THORPE. Mr. Chairman: Schools for the education of the deaf, dumb and blind?

Mr. PEPPER. Mr. Chairman: May I ask whether that amendment is merely by the way of insertion, or whether it carries with it the elimination of the subsequent part of that section? It seems to me that we ought to eliminate that million dollar specification.

The CHAIRMAN. We might as well by amendment strike that out because it is useless.

Mr. PEPPER. Mr. Chairman: May I ask Mrs. Miller, through you, whether there is any reason for maintaining that minimum age limit in the education of children? For instance, it is possible that a public kindergarten system for children very much younger might be desirable.

Mrs. MILLER. Mr. Chairman: We have that system at present, sir.

The CHAIRMAN. We might remove the age limit and also the million dollars.

Mr. PEPPER. So, Mr. Chairman, if I understand the amendment, it is that the general assembly shall provide for the maintenance of a thorough and efficient system of public schools for the education of the deaf, dumb and blind.

The CHAIRMAN. As the Chair understands that insert the section will read, "the general assembly shall provide for the maintenance and support of a thorough and efficient system of public schools including the education of the deaf, dumb and blind."

Mr. GORDON. Mr. Chairman: The interlineation should be after the word "educated" so that the clause will read "the general assembly shall provide for the maintenance and support of a thorough and efficient system of public schools wherein all the children of this commonwealth may be educated, including the care and education of the deaf, of the dumb and the blind."

Mr. REED. The effect of that is that if it is inserted a blind person after reaching maturity or above the age, he is not considered a child and is no longer to be the subject of support.

Mr. GORDON. That is the reason I suggest the interlineation of the word I have named so that it would only be the maintenance of children.

On the question recurring,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee agree to the substitute as amended?

Mr. GORDON. Mr. Chairman: May I suggest a further amendment to that clause? Add the following: "and shall appropriate sufficient money to carry this provision fully into effect."

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. REED. Mr. Chairman: Does that interfere in any way with local taxation?

Mr. FISHER. Mr. Chairman: That leaves it in effect as the Constitution is now save that the minimum of one million dollars is dropped.

Mr. PEPPER. That is not the question raised by Judge Reed. May it not be contended that this imposes upon the treasury of the commonwealth the sole obligation for the support of the public school system?

The CHAIRMAN. It seems to the Chair that this is worthy of thought in the light of the attitude of some of the districts.

Mr. GORDON. Mr. Chairman: I might say for the information of my colleague from Philadelphia that my purpose in drafting this in the manner that I did was to make it obligatory upon the state if the subordinate municipal division did not appropriate sufficient to educate all the children that must be educated, then sufficient appropriation must be made.

Mr. REED. But as the Judge worded that it would seem to imply that the whole cost of supporting the public school system should be borne by the state. If he could say in some way that it supplements contributions from the local authorities we would understand it.

Mr. GORDON. Let us use the words "only appropriate sufficient money to carry this provision into effect."

Mr. PEPPER. Mr. Chairman: Might I suggest that the initial declaration is very strong? It is that the general assembly shall appropriate for the maintenance and support of a thorough and efficient system. It seems to me that if part of the system is that local appropriations shall be made from local funds and that part of it breaks down that the primary duty of the commonwealth as here suggested by Judge Gordon remains. In the initial declaration the danger of making the provision in regard to state funds is that it relieves the pressure on the locality to do its share.

The CHAIRMAN. It seems to the Chair that that could be taken care of in the appropriation-making legislation.

Mr. GORDON. If the amendment does not meet with the full approval of the Commission I will withdraw it.

The CHAIRMAN. Judge Gordon withdraws his amendment. The Secretary will read the section as amended in order that there will be no question about it.

The Secretary read the amendment as follows:

The general assembly shall provide for the maintenance and support of a thorough and efficient system of public schools wherein all the children of this commonwealth may be educated, including the care and education of the deaf, of the dumb and the blind.

On the question recurring,

Will the Committee agree to the substitute as amended?

Mr. THORPE. Mr. Chairman: I think this should properly go in there as an amendment, on page 238 of the Compilation in the Constitution of 1776, and I move as an amendment that the last sentence of section 44 be added in its proper place to the tenth article, to wit: "And all useful learning shall be duly encouraged and promoted in one or more universities." I suggest that that be repeated in the present Constitution, and I so move.

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. ALTER. Mr. Chairman: Would the result of that be that the support of the commonwealth in so far as it extended beyond the public school system would be limited to the support and encouragement of one or more universities? Because if so it would very unjustly, and I think very improperly, seem to ignore the very well established claim of the Pennsylvania State College upon the support of the commonwealth.

Mr. THORPE. It is on page 238, section 44, the last sentence.

The CHAIRMAN. And to be inserted where, Dr. Thorpe?

Mr. THORPE. Mr. Chairman: If the Commission will turn to article VII of the Constitution of 1790 also, they will find a repetition of the same idea, so that the idea was found in two of the state Constitutions.

The CHAIRMAN. Where is it Dr. Thorpe's idea that these words be inserted?

Mr. THORPE. At the end of the first section of article X.

The CHAIRMAN. Then the motion is to insert at the end of the first section of article X the words "and all useful learning shall be duly encouraged and promoted in one or more universities."

Mr. GORDON. Mr. Chairman: There may have been some reason for that in 1776 and 1790. There is none now, I think, and it seems to me like a revival of the matter that we discussed this afternoon. I do not wish to again enter into that discussion, but it carries with it that which was withdrawn by Dr. Smith.

On the question recurring,

Will the Committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee agree to the substitute as amended?

Mr. McCORMICK. Mr. Chairman: I would like to amend section 2 by adding the words before the last word, "or denominational."

The CHAIRMAN. The Chair hears no second to the motion.

On the question recurring,

Will the Committee agree to the substitute as amended?

It was agreed to.

The CHAIRMAN. The next section, as the Chair recalls, section 5, was put off until tomorrow morning.

Section 7, the Chair understands from the Secretary, was adopted today.

NEW ARTICLE, SECTION 18.

The CHAIRMAN. The next section in order for consideration is section 18 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the section as follows:

Section 18. All municipalities shall have the power by ordinance to assess a part or all of the cost of a municipal improvement against property specially benefited thereby, irrespective of the relative locations of the said improvement and property; provided, that such assessment, whether made payable in one or several installments, shall not exceed the increase in salable value due to such improvement during the interval of one year prior to the authorization of the improvement and the fifth year following the improvement. The method of ascertaining such assessment may be regulated by law.

On the question,

Will the Committee adopt the report?

Mr. CONNELLY. Mr. Chairman: I would like to offer a substitute.

The substitute was read by the Secretary as follows:

Section 18. The general assembly may authorize assessments against all properties, whether abutting or not, which are benefited by the construction, enlargement, laying out, widening, grading or other improvements of public highways, parks, buildings or other public works by the state or any municipality thereof.

Mr. FISHER. Mr. Chairman: I second the substitute.

On the question,

Will the Committee agree to the substitute?

ASSESSMENTS FOR PUBLIC IMPROVEMENTS.

Mr. ENGLISH. Mr. Chairman: The substitute, as I understand it, contains the ideas as set forth in the original report. There is no substantial difference between them except that in the original report there is a limitation upon the extent of the benefits which may be assessed. I take it that even if the substitute were adopted and became the law, the legislature in enforcing this provision would undoubtedly see to it that the benefits assessed against property which did not abut an improvement should not exceed the actual benefits, so that personally I see no objection in the adoption of the substitute.

The CHAIRMAN. The report of the committee permits it to be done by ordinance.

Mr. CONNELLY. Mr. Chairman: I think my friend from Erie has probably misunderstood the substitute. I think if you will turn to the report of the committee the objection is to section 18 of the new article, "all municipalities shall have the power by ordinance to assess a part or all the cost of a municipal improvement against property specially benefited." Now that seems to me to be too narrow a construction to be placed in this Constitution because the words "specially benefited" may defeat the very object for which an improvement is to be carried on and the property may be entirely eliminated. That is one suggestion. The second suggestion was that it should be an act of assembly, and should not be a municipality. A municipality may have that power by a general law. Then the third objection was that "provided, that such assessment, whether made payable in one or several installments, shall not exceed the in-

crease in salable value due to such improvement during the period of one year prior to the authorization of the improvement and the fifth year following the improvement." The thought that I want to lay before this Commission is that there should be, as I tried to indicate in the amendment offered, a general power given to all municipalities to assess the benefits against the properties benefited, not specially on the question of salable value. I have not entered into that because in the general working out of this plan, of course, that would be taken into consideration at the time these benefits were assessed against properties, but to show in the one instance that it was specially benefited in my judgment is to go back to what we are trying to get away from. The words "abutting property owners" are eliminated, but in place I have put the words "specially benefited." And then comes the question of salable value. In other words, the question on broad general principles involved here is that where there is a big public improvement, and where there is enhancement in value of the property which is brought on the market in a short space of time as against the natural growth, which will take a long space of time, that the property by reason of the improvement should be assessed benefits, and should be compelled to pay in order to carry on this improvement. Now that is the purpose of the substitute amendment which I have offered.

The CHAIRMAN. As the Chair understands the proposition, it is that the general assembly may authorize that.

Mr. CONNELLY. Yes, sir.

The CHAIRMAN. The Chair desires to call attention that the peculiar rule as to special and pecuniary advantages is intended to be overcome as I understand it. That is to say, the general benefits may be assessed against property although they do not front on the improvements, that is, all the properties.

Mr. ALTER. Mr. Chairman: As I understand the section it expressly provides that assessments may be made against properties which do not front on the improvement.

The CHAIRMAN. And that general benefits, not especially pecuniary ones, may be assessed.

Mr. ALTER. Mr. Chairman: It seems to me that in providing that benefits may be assessed against property which did not abut upon the improvement we were going far enough, but to eliminate the requirement that property must be especially benefited in order to have benefits assessed against it, while I would not attempt to discuss a question of this kind with the gentleman from Philadelphia, it does seem to me that we are leaving our anchorage and setting out upon an uncharted sea.

Mr. REED. Mr. Chairman: If you undertake to run a boulevard through the city of Harrisburg there is no limit upon the power of the legislature to assess or authorize the assessment of general benefits against properties a mile away, although that benefit may be one in which the property assessed only shares with the public. There ought, it seems to me, to be some word there to show that the assessment is restricted to some benefit to property that is not shared by the general public. You build a boulevard in Philadelphia to Fairmount Park. Everybody is riding on it and enjoying it, but you do not assess everybody in the city of Philadelphia on that basis.

Mr. CONNELLY. Mr. Chairman: If you do that, while there is some merit in what Judge Reed says, you defeat the whole object which you are trying to carry out. Public improvement in a way, take for instance the city of Philadelphia, the building of a great highway where in a short space of time that property which in the normal course of events would not have a market for fifty years, you accelerate it and bring it almost to the heart of Philadelphia in a short space of time. The theory of the proposed substitute is that the properties that are benefited should pay for the improvement. Now in Philadelphia, in reply to Judge Reed, so far as the parkway is concerned no benefits have been assessed against any properties on the parkway because there was an act of assembly that especially prohibited that, so far as parks and parkways were concerned, and in case the supreme court—

Mr. REED. Mr. Chairman: I only say that for illustration.

Mr. CONNELLY. I am answering your question. I only want to get before you this thing of your carrying out this feature of the public improvement in anticipation of the future in allowing the growth of the municipality in the case of properties especially benefited; if they should abut upon the improvement they should contribute something toward that improvement, which is subsequently to be worked out in some respects as questions of fact are determined by a jury, as well as an appeal to the common pleas.

Mr. REED. I think the word is "particular" benefit. And if you want to define that still more, the words, "not shared in by the general public."

Mr. CONNELLY. Mr. Chairman: I would rather take the second than the first "not shared in by the general public."

Mr. REED. Mr. Chairman: Something of that kind should be inserted into this Constitution for the protection of the innocent property holder.

The CHAIRMAN. Is that offered as an amendment?

Mr. CONNELLY. I have just been offering ideas to work out.

The CHAIRMAN. The only question before the Committee is the question of Mr. Connelly's substitute section as drawn by him for the section as reported by the committee.

Mr. FISHER. Mr. Chairman: Just by way of suggestion it seems to me that there ought to be something put into this provision limiting the amount of the assessment of the special benefits which the property received.

Mr. CONNELLY. Mr. Chairman: That would be a question of fact that would have to be subsequently worked out. Pardon me, if you will let me get Judge Gordon's thought—

Mr. GORDON. Before the words "benefit." I think Judge Reed's proposition is sound "particular districts which are generally and particularly benefited" is actually what Judge Reed has in mind.

The CHAIRMAN. Judge Gordon will recall that the language of the supreme court in the railroad condemnation cases, that I recall carried through all the cases, is that the advantages which can be said to be by the railroad conferred upon property were special and peculiar to the property in question and not such as shared in by the general public.

Mr. GORDON. I am bound by the supreme court but not—

The CHAIRMAN. The only question it seems to me is whether that rule of special and peculiar benefits is the rule that is to be carried into this constitutional provision.

Mr. CONNELLY. Mr. Chairman: I accept Judge Gordon's thought, "which particularly benefit by the construction." I have no objection to that.

On the question recurring,

Will the Committee agree to the substitute?

It was agreed to.

NEW ARTICLE, SECTION 19.

The CHAIRMAN. The next section in order for consideration is section 19 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the section as follows:

Section 19. A municipality acquiring or appropriating property or rights over or in property for public use, subject to such restrictions as the general assembly may from time to time impose, may secure or appropriate an excess of property over that actually to be occupied or used for public use, and may thereafter sell or lease such excess and impose on the property to be sold or leased any restrictions appropriate to preserve or enhance the benefits to the public of the property actually occupied or used.

On the question,

Will the Committee agree to the report?

MUNICIPALITIES AUTHORIZED TO SELL EXCESS PROPERTY.

Mr. CONNELLY. Mr. Chairman: I would offer this as a substitute for section 19.

The CHAIRMAN. The substitute will be received and read by the Secretary.

The Secretary read the substitute as follows:

The state or any municipality thereof may acquire or appropriate property or rights over or in property for public or corporate uses and may in furtherance of its plans for the acquisition and use of such property or rights, and subject to such restrictions as the legislature may from time to time impose, appropriate an excess of property over that actually to be occupied or used for such public use, and may thereafter sell or lease said excess and impose on the property so sold or leased any restrictions appropriate to preserve or enhance the benefit to the public or property actually occupied or used.

On the question,

Will the Committee agree to the substitute?

Mr. ENGLISH. Mr. Chairman: I think the substitute as suggested is open to two criticisms which are quite serious. The substitute says "The state or any municipality thereof may acquire or appropriate property or rights over or in property for public or corporate uses and may in furtherance of its plans for the acquisition and use of such property or rights, and subject to such restrictions as the legislature may from time to time impose, appropriate an excess of property over that actually to be occupied or used for such public use, and may thereafter sell or lease said excess and impose on the property so sold or leased any restrictions appropriate to preserve or enhance the benefit to the public or property actually occupied or used." Now, as I understand the local situation, the supreme court in

the Philadelphia parkway case said that the statute under which the city was then proceeding was in violation of this Constitution because it authorized the taking of more property than was necessary for the particular purposes, and to that extent it was not a taking of property for public use if the use in question was not a public one, and therefore it violated this section of the Constitution. I am objecting to the phrase "or corporate."

Mr. CONNELLY. Mr. Chairman: I have no objection to those words being taken out, the words "or corporate."

Mr. ENGLISH. Mr. Chairman: That would dispose of the one objection I had in mind. The other one is this: While this section or one similar to it may dispose of the objection of the supreme court of Pennsylvania so far as the Constitution of Pennsylvania is concerned, we must not lose sight of the fact that we still have to deal with the fourteenth amendment of the Federal Constitution, or the question will arise again in the Supreme Court of the United States as to what would be a public use. It seems to me therefore that the language in the report of the committee is a little superior because it tends to indicate something in the nature of a public use so far as the taking of the excess property is concerned. The report of the committee as I have it reads like this, "The state or any municipality thereof may acquire or appropriate property or rights over or in property for public or corporate use and may in furtherance of its plans for the acquisition and use of such property or rights, and subject to such restrictions as the legislature may from time to time impose, appropriate an excess of property over that actually to be occupied or used for such public use, and may thereafter sell or lease said excess and impose on the property so sold or leased any restrictions appropriate to preserve or enhance the benefit to the public or property actually occupied or used." I submit that the language in this section indicates that the taking of property over and above that which is to be kept obviously in the public service is charged with something in the nature of public use, and unless we have a definition of the term "property" that is to be taken and resold, or resold with restrictions, the Supreme Court of the United States may find the same difficulty with this section as the supreme court of Pennsylvania found with the statute which was drawn substantially in the same language.

Mr. PEPPER. Mr. Chairman: It seems to me there is great weight in what Mr. English has said. The real question is whether or not what we propose can be dealt with in such a way as not to contravene the fourteenth amendment of the Federal Constitution.

The CHAIRMAN. Is it the fourteenth or the fifth amendment that we are in danger of; "due process of law" is the fourteenth.

Mr. PEPPER. And the other is that property shall not be taken without compensation.

Mr. ENGLISH. Taking property for public use without compensation.

The CHAIRMAN. I think that is the fifth amendment as I recall it.

Mr. PEPPER. Well, at all events it seems to me that what we want to emphasize is that all the property that is to be taken is to be taken for a public use. The particular point that we want to cover is that the taking of the property for public use is not necessarily

followed by holding all the property taken, but that the public use may be best subserved by parting with some of the property taken under some restrictions that are protective of the public interest. The substitute and the report of the committee seem to me both to be defective in that they refer to the taking of property in excess of that which is to be used for a public use; that phrase appears in both of them. It is a redundancy which seems to me to be dangerous. I would suggest this; it seems to me to be the more direct way: "Wherever the public purpose for which land is taken can best be attained by acquiring more land than the municipality proposes to retain, the municipality may take all the land which in the judgment of the authorities thereof is proper for the attainment of such purpose, and may thereafter dispose of portions thereof subject to restrictions protective of the public interest." I move that as a substitute for the pending proposition.

Mr. CONNELLY. Mr. Chairman: I accept that.

The CHAIRMAN. The Chair suggests that it might be well to incorporate in that a taking by the state; that could be incorporated in another section if thought desirable. It might be better not to mix it up.

Mr. GORDON. Mr. Chairman: I would like to suggest to Mr. Pepper whether this would not be a little more simple after the word "impose," "and any property so appropriated for the public use, and any property so appropriated that may not thereafter be necessary for the public use may be sold, leased," and so on.

Mr. REED. Mr. Chairman: I thought somewhere in Mr. Pepper's amendment that he had the words "subject to such restrictions as the legislature may impose" so that it is not altogether left to the municipality.

Mr. PEPPER. Mr. Chairman: That difficulty to which attention is called is inherent in the Constitution. The real difficulty is that we have cases in which the property that is to be retained is less than the whole amount of property which should be controlled in the public interest. In order that you may control in the public interest that property which is not to be retained, you must first take it and then dispose of it under restrictions. Now it seems to me that it might well be contended to be a legitimate public use to take all the property which you expect to retain, and also that which you expect merely to control, and to authorize the disposal of it subject to protective restrictions upon that which you do not need to retain. That would enable you in condemning, for instance for the purpose of a boulevard, to appropriate land on both sides to a sufficient depth to make building lots of the right type for an improvement of that sort, and then having acquired all of the property under the exercise of the power of eminent domain, this would permit the taking authority to dispose of those lots subject to restrictions that protect you with reference to the public improvement. Now it seems to me that if a thing can be justified at all under the Federal amendment, it can be justified on that theory. It strikes me as rather a disputable constitutional proposition any way. It is carrying the conception of eminent domain just about as far as one can think of its being carried.

Mr. McCORMICK. Mr. Chairman: May I ask a question? Does the property appropriated have to be adjoining property?

Mr. CONNELLY. Mr. Chairman: It may be any property.

Mr. McCORMICK. Mr. Chairman: Under it a municipality might enter the real estate business?

Mr. CONNELLY. Mr. Chairman: It can be an improvement like building a boulevard, laying out a boulevard three hundred feet in width. There would be fifty feet that would remain forever for public use. The balance of the one hundred feet, there would be certain restrictions placed thereon which could afterwards be sold, and the proceeds from that sale would then go into the sinking fund as now provided by law towards liquidation of the city's debt. It would go upon the theory that it was a contemplated municipal improvement. That is the theory of this.

Mr. McCORMICK. Mr. Chairman: It would make it possible, for instance, to appropriate the property on the opposite side of the street. There is now in this city a section of Front above Herr street where they are wiping out, condemning, and buying one hundred thousand dollars worth of property on the river side. It would make it possible to purchase property on the other side, and after the improvement was made, we sell that property at an enhanced value.

Mr. CONNELLY. Mr. Chairman: Exactly. That is not within the spirit of this proposed amendment, nor even the letter.

Mr. McCORMICK. Mr. Chairman: Then you are only appropriating property abutting upon the improvement.

Mr. CONNELLY. Mr. Chairman: Practically that is the way it works out. Taking the theory of the boulevard that is laid out one hundred and fifty feet in width, that question arose on Arch street, where they tried to take certain properties on Arch street between Sixteenth and Seventeenth. Then on the theory of excess condemnation under the act of the general assembly, it was declared unconstitutional. Now then, if we had that right our parkway itself would be one hundred and fifty feet on either side. There would be fifty feet for protective purposes, and then all beyond that which was taken under the right of eminent domain could be sold. That is the theory.

Mr. McCORMICK. Mr. Chairman: All the property is adjoining?

Mr. CONNELLY. Mr. Chairman: Exactly.

Mr. McCORMICK. Mr. Chairman: I wonder whether any expression of that sort is necessary.

Mr. CONNELLY. Mr. Chairman: I think not, sir; I think it would only tend to become effective when it faced your property.

Mr. REED. Mr. Chairman: It seems to me that is eminent domain run mad. I think I could retain Mr. Connelly or Mr. Pepper to demonstrate to any court that this is not a taking as a matter of public use. The idea that a city can cold-bloodedly lay out a boulevard one hundred feet wide and then appropriate three hundred feet on either side and then resell it in order to get enough money to pay for the boulevard! I believe you would have some trouble to demonstrate to some court outside of Philadelphia that that was a public use. It seems to me that Mr. Pepper's suggestion carries with it the idea, and I suppose that is the general intent, that where in the laying out of the street it was necessary.

Mr. FISHER. Might I ask Mr. Connelly whether this amendment as submitted had in contemplation enabling legislation in order to enforce it?

Mr. CONNELLY. Yes, sir.

The CHAIRMAN. The Chair's understanding of the parliamentary situation is that Mr. Pepper's substitute has been accepted by Mr. Connelly, and Mr. Connelly's substitute is withdrawn.

Mr. CONNELLY. Mr. Chairman: That is correct, sir.

The CHAIRMAN. Then the matter that is before the Committee of the Whole is the question on the adoption of Mr. Pepper's substitute for the report of the committee.

Mr. FISHER. Mr. Chairman: I do not know whether I get the full intent of this proposal, but as I gather it it is necessary first that there shall be in contemplation a public improvement. Then there should be provided a process by law under this amendment in order to carry through that improvement. Now, it may be necessary in order to develop the improvement to take on more property than is actually necessary. For instance, a boulevard might be laid out through the city at an angle, as was done in Philadelphia, so as to occupy a portion of a property and leave a portion of the property unutilized by the public improvement. Yet it would be impractical to carry through the improvement without the appropriation of the entire property. It might not be severable. Or another instance might arise where it was contemplated to have an improvement that would be rather in the nature of an easement, the installation of a water line, the installation of a disposal plant or the installation of anything of that nature where the ground might be utilized for the installation of the improvement and afterwards all or a portion of the surface disposed of with proper reservations to protect the improvement so that the acquisition of the property would not fall as an entire loss on the public. If I catch the design of the amendment, that is it. Now, there is some question raised here among these constitutional lawyers as to whether or not this provision would run afoul of the Federal Constitution. I find here in the fourteenth amendment the provision which seems to be quite plain and simple, and it is to this effect, "nor shall any state deprive any person of life, property or liberty without due process of law." This is the only limitation placed upon the state by the Federal Constitution.

Mr. PEPPER. Mr. Chairman: I should like to modify the pending amendment, with Mr. Connelly's consent, so as to cover the point suggested by the Chair, to make the provision applicable to the commonwealth as well as to the municipality, and also to provide the safeguard suggested by Judge Gordon and Judge Reed, that the action of the taking authority shall be subject to such limitations as the general assembly might prescribe.

The CHAIRMAN. Will Mr. Pepper just read the amendment as it will be?

Mr. PEPPER. Mr. Chairman: The amendment will then read thus:

"Whenever the public purpose for which the land is taken can best be attained by acquiring more land than the commonwealth or the municipality proposes to retain, the commonwealth or the municipality, subject to such limitations as the general assembly may prescribe, may take all the land which in the judgment of the proper officials is needed for the attainment of such purposes, and may thereafter dispose of portions thereof subject to restrictions protective of the public interest."

Mr. THORPE. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. REED. Mr. Chairman: Judge Sulzberger, our good old friend, in the case of the excess condemnation act of Philadelphia, to which Mr. Connelly refers, used this language: "The city of Philadelphia has designed to build a noble highway from its City Hall to Fairmount Park. It was to pass through a region containing buildings insignificant and mean in appearance. Many of the private homes were small, and the owners, however gifted with taste or actuated by public spirit, could not build structures of sufficient magnitude to give dignity to the highway.

"In order to prepare the way for a highway which should by its character beautify the city and increase its attractiveness and renown, it was felt that the city should have power to control the property abutting on the parkway to the depth of two hundred feet beyond and should so exercise this control as to insure the erection of stately and attractive buildings along the whole length of the parkway. The first necessity was, therefore, to break up the small holdings and to establish the rule that buildings must be of a minimum width far greater than most of the actual buildings. Other rules would then follow, regulating the minimum, maximum and proportionate height of buildings, the relation between buildings on adjoining lots, the prohibition of blind walls and kindred matters. * * *

"The real purpose was the development of a highway which should be a model of architectural beauty and impressiveness. That such a feature of a great city is of value cannot be denied. It is an important educational force which tends to improve good taste in buildings in all sections of the city and the commonwealth. Moreover, it has an effect directly utilitarian. It increases the attractiveness of the city, induces strangers to visit it, and this enlarges trade and commerce.

"It is to the weight of all these considerations that we must attribute the enactment of the statute of 1907."

A hard-hearted supreme court, most of whom did not live in Philadelphia, said that while that was a public purpose it would not justify the taking of the individual's property by the city.

Mr. CONNELLY. And then there was also a transfer of property from A to B which was afterwards the point of contention in the case and not the language that you used.

Mr. REED. I used the report of the committee. Some members drew that up. I am using the language—

The CHAIRMAN. They did not sell to an insurance company.

Mr. CARSON. Mr. Chairman: It seems to me that we ought to be very cautious of the language that we employ in conferring this power. Most of us have in mind as an illustration of the best application of this language the Philadelphia parkway. The parkway, of course, runs out diagonally across well-established streets which intersect at right angles. The consequence is necessarily wherever the angle of the parkway cut the right angle there were little triangles and rejected corners and matters of that kind, like the scrapheap of the carpenter shop, which would fill all the wayside. They would either have to be utilized as ornamental flower beds or places for fountains or sites for trees, or otherwise they would become simply

places where refuse would accumulate. Now, it does not necessarily follow that every project may be, or is going to be, on a diagonal line. It might be that a great highway like the Kings Highway in London, running north from the Strand to Oxford street, would intersect entirely at right angles. Now, the purpose of this amendment as I understand it, is to prevent people who happen to be located along the line of the project and improvement as owners of property from deriving enormous benefits from the advance in value of their own land fronting on a greatly enlarged boulevard, and that, in order to prevent speculation of that kind or undue enhancement of private property resulting from a great public improvement, the municipality projecting a great public improvement is to be empowered to acquire a sufficient amount of land to the right and to the left of this boulevard to such an extent that though it did not intend to use the whole of it, may exclude the speculator and exclude the private owner from undue profit, and then on its own terms part with the property so acquired, which would in turn enable the municipality to pay for the improvement made. Now, we ought to use language which does not trench upon the right of private citizens at such a distance that in the words of Mr. McCormick a municipality practically enters the speculative real estate business and could open a highway by a broad swath cut straight through the municipality, and make it so broad as practically to acquire all the available land that will be benefited by this improvement and hold it and sell it on terms, extinguish the right of the private citizen, and thereby come into direct conflict with both these amendments and the Constitution of the United States. We ought to be careful of the language we use. I am not quite sure that what has yet been suggested will guard private rights as well as at the same time extend the public power.

Mr. PEPPER. Mr. Chairman: I submit, sir, that the contingency that Mr. Carson has referred to is an abuse of a power against which you cannot guard by exact language. It seems to me that the thing that we are discussing is difficult and disputable, and it may well be that it will ultimately be decided that the taking of property to be disposed of subject to restrictions is not such a public use as justifies the exercise of the power of eminent domain under the Federal Constitution. So this provision that we are considering, or any substitute for it that we can phrase, will fail because it is a matter of substance and not of form. On the other hand, if the taking of property which is to be in part disposed of subject to restriction for the purpose of forwarding the improvement is under any circumstances a use which can be justified, then it will be a question of fact in any particular case whether that use has been abused or has been pursued according to law. It does not seem to me that we can guard against all possible abuse of the power. The real question is whether there is a power here which can be legitimately invoked at all.

Mr. REED. Mr. Carson's illustration is that legitimately use of that property I think that—

Mr. PEPPER. Mr. Chairman: I should think in Mr. McCormick's illustration of the taking by the city or other municipality of land not actually contiguous to the boulevard or parkway under construction for the purposes of real estate speculation for the profit of the municipality, that you would have a clear case which the court

would restrain on the ground that under the guise of eminent domain you are doing something which was a spoliation of the private owner. That would seem to me to be a clear case.

Mr. REED. Mr. Chairman: I would like to have the author of that provision take a clear case and tell me whether he thinks it is the legitimate exercise of eminent domain or spoliation. Eighty-seven per cent of the cost of opening the Kings Highway, to which Mr. Carson has referred, was paid by taking property on either side of it and reletting it and letting it at rather long-term leases.

Mr. CARSON. It is very easy to pay for a highway on that basis.

Mr. REED. Mr. Chairman: The author of this pamphlet is the secretary of the City Park Association of Philadelphia. Many of these things come out of Philadelphia. I am reading what he says: "The opening of the Kingsway in London by the condemnation of abutting property and the recoupment of a very large part of the cost of the improvement by the renting of the excess property so acquired on long-term improvement leases has been widely published. While the original cost of the Kingsway was thirty million dollars, the net cost on the basis of capitalized leases 'appears to be only four million dollars. As a matter of fact, these leases are for ninety-nine years, which means that at their termination the city will come into vastly valuable possessions of improved property. That financial result for the taxpayers is obviously most satisfactory." But what about the poor fellows whose property was taken?

Mr. CARSON. Mr. Chairman: There is no restriction in the English constitution such as we have here.

Mr. McCORMICK. Mr. Chairman: May I ask another question of these lawyers? Would it not be possible, Mr. Connelly, under our existing laws for the city of Philadelphia to extend the parkway into City Hall if they wanted to condemn the property for park purposes and make parkway in which—

Mr. CONNELLY. It would not have been possible to extend Fairmount Park because that is controlled by a commission.

Mr. CORMICK. But I mean a park property might have been condemned one thousand feet wide occupying a space in the heart of Philadelphia; little houses, big houses, everything removed, because they said they wanted a road built which would connect with Fairmount Park. Therefore, it would have cost the city millions, and therefore if the city can build a park or a parkway in this manner by taking a few hundred feet on each side they finance a scheme that would be a great injustice to property holders. I cannot see any objection to this proposal as suggested by Mr. Pepper and Mr. Connelly.

Mr. CONNELLY. Mr. Chairman: In the first place take by way of illustration the parkway of Philadelphia. The plan that we have suggested here of taking of the property, selling of the property, under excess condemnation would never have paid for the parkway in Philadelphia. It would have only protected the parkway in Philadelphia, and after fifteen years Philadelphia is now undertaking to broaden out the parkway. The cost of the property has enhanced in value ten million dollars where if she had had this ten years ago it would have cost very much less. That is the situation today. There is such an ordinance now pending and up for consideration; plans have been redrawn for the changes because the value of real

estate in Philadelphia has been greatly increased by reason of the building of the parkway. The encroachment of little pieces of land has now become a menace, and not only a menace but they jumped property a thousand per cent in value.

While I am on my feet, the plan that Mr. Carson suggested could never possibly work out so far as any municipality is concerned except by taking it as a part of a general condemnation, and under the right of eminent domain pay for that, and thereby creating a public use. I leave to such a distinguished lawyer as Mr. Carson the question of the Federal amendment or the fifth clause of the Constitution. I cannot possibly see where that could be applied in this case, because after all the Federal Constitution only takes into consideration the taking of private property for public use when you appropriate without compensation. In Philadelphia a case arose some two years ago where in 1855 the legislature of Pennsylvania passed an act that in consideration of the Pennsylvania Hospital for the Insane not cutting through or dedicating certain streets that no street would ever be allowed to be cut through that hospital. Philadelphia in 1914 passed an ordinance cutting a street through that hospital in contravention of that act of assembly. The supreme court of Pennsylvania said it was not a contract, or even if it was, it was only personal property. I had the pleasure of arguing that case in the United States Supreme Court.

Mr. PEPPER. Mr. Chairman: It would be difficult I think to find a more apposite illustration of the way in which this may be properly worked out than the one cited by Judge Reed, and I think that it is little short of astonishing that any one should suggest that the exercise of eminent domain in the heart of London could have been successfully carried through in such a way as to work hardship to English property owners. If there are any people in the world whom it is hard to detach from their property and around whose ownership and tenure greater safeguards are thrown by constitutional tradition, I do not know where they are to be found. If you can in the heart of London create a highway and on either side of it take property which is afterward sold or disposed of by lease to defray in part the cost of the improvement, you can do that in any place where the English law is known. It is true, as Mr. Carson says, that we have the definite written prescription in the Constitution, but please observe that the question here, sir, is not whether you can take private property for public use without adequate compensation; the question is whether the use for which you are taking it is a public use. May you take this property for a use which may be challenged as being ultimately a non-public or private use? That is the question, as I said a minute ago. If it should be decided that this is not a public use, that is the end of the taking. If it is a public use, the question of how the power shall be exercised in any particular case is a question to be settled by the legislature under such restrictions as may be imposed. Then if that power is used as is sometimes done in case of taxation, something is done under the guise of taxation which is really confiscation; so here if something is done in the name of an exercise of eminent domain which is really a cloak for municipal land speculation, that can be corrected by the court.

Mr. REED. Mr. Chairman: We have the very flower of the Philadelphia bar here tonight, and if they cannot tell us whether this is a legitimate exercise of public power, then we ought not to pass this amendment. Now, of course, Mr. Pepper knows that Parliament is supreme. They have no written constitution. They could authorize the city of London to take the whole of London and raze it. What I am insisting on is that we have a written Constitution, a Federal Constitution, and that is not a public use, and he can answer that question tonight as well as he can any other time.

Mr. PEPPER. Mr. Chairman: The flower of the Philadelphia bar may make answer to this question, if Mr. Carson and my colleagues choose to pose in that capacity; but whether the sturdy oaks of the Allegheny bar will accept the explanation when made, I do not know. The matter that we have in hand, it seems to me, is one which we may debate endlessly. The real question is whether or not we are going to try that which is a new departure in an effort to provide for a very great and pressing necessity in the practical application of the law of eminent domain in its relation to municipal improvements. When Judge Reed tells us that in England Parliament is supreme, he knows as well as any of us knows that if Parliament ever passed an act which transcended by a hair's breadth the liberties and the rights of the English people, the Parliament that passed it could not survive the next general election.

Mr. FISHER. Mr. Chairman: I would like to ask Mr. Pepper the force of these words in his amendment. The amendment reads "The commonwealth or the municipality, subject to such limitations as the general assembly may prescribe, may take all the land which in the judgment of the proper officials is needed for the attainment of such purpose." Why is it provided that the judgment of the proper officials shall prevail, and who shall be the proper officials?

The CHAIRMAN. Is that not just the same as railroad condemnation? The board of directors is supreme in the first instance.

Mr. PEPPER. I used the phrase "proper officials" so as to cover the double alternative of the commonwealth or the municipality. The idea was to make it clear that the discretion was the legislative or executive and not the judicial discretion. In other words, that it was only in case of an abuse of the legislative or executive discretion that the courts could intervene.

On the question recurring,

Will the Committee agree to the substitute as amended?

It was agreed to.

NEW ARTICLE, SECTION 20.

The CHAIRMAN. The next section in order for consideration is section 20 of the proposed new article of the Constitution, the report of the committee being that section 2 of article XV of the present Constitution be dropped and become section 20 of this article.

The Secretary read the section as follows:

Section 20. No debt shall be contracted or liability incurred by any municipal commission except in pursuance of an appropriation previously made therefor by the municipal government.

On the question,

Will the Committee adopt the report?

It was adopted.

NEW ARTICLE, SECTION 21.

The CHAIRMAN. The next section in order for consideration is section 21 of the proposed new article of the Constitution, the report of the special committee on local government being that section 7 of article IX of the present Constitution be dropped and amended to become section 21 of this article.

The Secretary read the section as follows:

Section 21. The general assembly shall not authorize any municipality to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual; but nothing in this section shall prevent the lease or sale by the municipality of a public facility belonging to it on fair and reasonable terms.

On the question,

Will the Committee adopt the report?

EXTENSION OF MUNICIPAL CREDIT.

Mr. CONNELLY. Mr. Chairman: The purpose, as I take it, of the words "but nothing in this section shall prevent the lease or sale by the municipality of a public facility belonging to it on fair and reasonable terms" is that there is an attempt to try to overcome a decision of the supreme court of Ohio. I frankly cannot see how the words get away from the decision of the supreme court of Ohio growing out of a lease with a railway company in the city of Cincinnati, with the street railway company on terms that were declared unconstitutional by the supreme court of Ohio, and with the same thought a lease was made in 1918 between the city of Philadelphia and the Rapid Transit Company for the operation of high-speed lines and certain surface lines. I do not believe that this section or the words that I have read to you will in any way help the situation in Philadelphia so long as the words remain in the section of lending its faith or credit to any corporation. Under the act of 1913, I take this as more of a legislative provision than a constitutional one, it gives the city of Philadelphia the right to enter into a lease with high speed-lines, but whether some of the other lawyers in this Commission find that anything in this section will prevent the lease and sale by a municipality on fair and reasonable terms gets away from the objection of lending the credit of a municipality to a private corporation for the operation of its high-speed lines, I do not know. Now, that is the whole point; we are trying to help Philadelphia. I would only be too happy to work out the problem in any way. I do not believe that these words help at all; in fact, I would think that they contribute more of a hindrance to the proper working out of that question unless you give us an interpretation of what are "fair and reasonable terms."

Mr. CARSON. Your objection is to the words in italics?

Mr. CONNELLY. My objection is to the words in italics because today, and that is undisputed by everybody, the city of Philadelphia has the right to operate its high-speed lines by lease or otherwise, or to dispose of them in such way as is provided by the act of 1913. Now, how those words add any further strength to that act, I fail at this time to understand or see. I would move, therefore, to strike out "that nothing in this section" down to the words "reasonable terms."

The CHAIRMAN. That will leave the provision as it is in the present Constitution.

Mr. CARSON. May I ask for some information? Who put those words in? What was the purpose of putting them in?

Mr. CONNELLY. One of the gentleman not connected with this Commission, but who occupies an important official position in this Commission, and who was very anxious to help Philadelphia so far as trying to provide for the lease of the high-speed lines is concerned, suggested these words. Do I answer the gentleman's inquiry sufficiently?

Mr. CARSON. Well, yes; because it discloses that you are not in position to give a satisfactory answer.

Mr. CONNELLY. Yes, I am; but not in the position of mentioning the gentleman's name, that is all.

Mr. CARSON. It does not seem to me that the words in italics are germane at all to the preceding part of the section. I do not want to do anything that will hamper the growth of Philadelphia. I have the greatest respect for you people who have studied this subject in a way that I have not.

Mr. PEPPER. I think I can answer that question. The problem—

Mr. CARSON. May I state my whole question, so that the gentleman's answer may be continuous?

As I read it, the present provision of the Constitution forbids a municipality's becoming a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual. Now, that I can understand. Public moneys are not to be used in order to promote private enterprise or boost the credit of some private association. Now, that seems to be a perfectly proper prohibition.

"But nothing in this section shall prevent the lease or sale by the municipality of a public facility belonging to it on fair and reasonable terms." As Mr. Connelly has pointed out, if a lease of this property is already in the ownership of a municipal corporation, it has the right to dispose of it by sale, or lease it if it cannot sell.

Mr. PEPPER. This problem of a municipality is one of a public facility and instrumentality of service.

Mr. CARSON. Can you give us an illustration?

Mr. PEPPER. An elevated railway, high-speed line, or a subway, any expensive and costly instrumentality of public service.

Mr. CARSON. Which it owns?

Mr. PEPPER. Of which the municipality is the owner. Suppose the municipality were to lease, in the exercise of its power to lease, that public facility to a public service corporation which should proceed to operate it; suppose the lease were to provide a fixed rental payable at specified intervals, and then it were to be provided that in case the lessee was not in funds to pay the rental as and when it might accrue, that the municipality would lend to the lessee money to pay the rent. Clearly that would be a subterfuge and would be a lending of the credit of the municipality to the lessee. The supreme court of Ohio has decided that the result that would obviously be reached in the suppositious case that I have just put should also be reached upon the state of facts which came before that court under a lease in which there was no rental that was payable certainly, and at all events, but was contingent upon the earnings of the system

being sufficient to pay the rental. The supreme court of Ohio said that when the municipality had leased the facility to the lessee upon terms such that the yield of the facility to the municipality was dependent upon the use made out of the facility by the lessee, that that was such a lending of credit of the municipality to the lessee as vitiated the lease. Now that is a decision that carries the interpretation of that constitutional language very far. Possibly the supreme court in Pennsylvania would not reach the conclusion that the supreme court of Ohio has reached, but it was thought wise in drafting this section to safeguard the Constitution by providing that in the event of a lease or sale the municipality should be free to make what were fair and reasonable terms under the circumstances. Now, whether or not that particular expression meets the difficulty, I have some doubt. I share Mr. Connelly's views in regard to it, but I do not think that it would be wise to cut this provision out altogether and take the chance that a decision similar to the Ohio decision might be rendered here. What, of course, is really needed, if it could be stated so boldly as that, when it comes to a lease or a sale of a facility of which the municipality is the owner that the municipality shall have all the power of a natural person. That is really what is wanted, but whether it would be safe to say that in constitutional language, I do not know; but I think we ought not to cut out the provision in view of the fact that in its absence we may come face to face with a difficulty that will invalidate any municipal lease of a costly facility where, as is likely, the returns from the facility will be little or nothing on account of the very great cost of construction.

Mr. GORDON. Mr. Chairman: I should like to have a fuller explanation of the purpose of this provision before I vote upon it. It provides that a municipality may sell a public facility. I do not know how comprehensive that term is. I suppose that by sale they may sell in perpetuity, an absolute sale of the public facility. What public facilities does it cover? It seems to cover all public facilities. Does that mean the right of way in a public highway? By the term here that is a public facility. There ought to be no right to sell that at any time. Leasing it is another question, but the phrase is so full and the possibilities so great that there ought to be an explanation of the right to sell public facilities before we pass this portion of the report of the committee.

Mr. CONNELLY. Mr. Chairman: If any of the gentlemen of the Commission would want any information on this subject-matter I should only be too glad to answer the questions. What Judge Gordon has just said is one of the thoughts that was running through my mind; to prevent the sale or lease of a public facility that would mean anything within the control of the municipality, but the particular thought, however, that is for consideration grows out of the operation of high-speed lines, as I said before, because of the contract made between the city and the operating company in 1918, where there was a lending of the credit of the municipality to the corporation. I think it was thought that these words added something to this clause. Now, if anyone can show that it does I shall be only too happy to withdraw my motion. But it seems to me that the matter is further confused inasmuch as any lease or contract that may be made would have to be made between the city and the company,

based upon such terms wherein the credit of the city was not involved, and therefore the words "but nothing in this section shall prevent the lease or sale by the municipality of a public facility belonging to it on fair and reasonable terms" does not help, as I view the situation, so far as working out a contract between the city and the company is concerned; but it was thought, as Mr. Pepper a moment ago said, that adding these words made in substance the Ohio case where there was some pledge of faith and credit of the municipality in a lease. How can it be extended in view of the provision of this Constitution which expressly prohibits the city from lending its credit to a company? It makes the question more or less complicated; it grows out of the situations that have taken place in the last year; grows out of situations looking forward to the future where the city of Philadelphia has authorized the expenditure of fifty-seven million dollars in the building of high-speed lines which will perhaps run into one hundred and twenty-five million dollars before they are completed; and then with the thought in mind that that would be regulated in some way by an operative agreement, all of which I think as a general proposition can be worked out so long as there is no pledge of the credit of the city to a company in order to work out that problem, it might in turn sink the city. There is the difficulty that I have experienced.

Mr. ENGLISH. Mr. Chairman: I have no doubt it was the intention of this section, or the words in italics, to meet the specific difficulty in the situation in Philadelphia. If it does not do that it seems to me that the gentlemen from Philadelphia might determine some set of words that would meet the peculiar local conditions there. At the same time, I am not satisfied that there should not be some limitation upon this section so far as it concerns the extending of municipal credit under some given circumstance. We know at the present time that, so far as certain public facilities are concerned, it is impossible to get in the ordinary market money to finance capital expenditures. I refer specifically to street railway lines in Philadelphia perhaps, and in other places certainly. Now, the situation may develop in Pennsylvania in these various municipalities in which it might become not only advisable but necessary that municipal credit be extended for the construction of additions to street railway facilities. In that event there is no doubt about the conflict between the proposal and this section of the Constitution. It might be deemed advisable to adopt in Pennsylvania some such plan as is in existence in the city of Cleveland at the present time, where the city for a number of years has guaranteed to the public utility a certain return on its capital invested in exchange for control of the service, and at the rate of fare. That plan perhaps could not be adopted in Pennsylvania without coming in conflict with this section of the Constitution. So I submit, therefore, that it will not do summarily to dismiss the entire subject by striking out the proposed limitation upon the right of municipalities to extend their credit. It seems to me that at the present time it might be possible to withdraw this section from the consideration of the Committee so that the Committee will benefit by all of the suggestions that have been made here and report perhaps a section that might be considered more suitable under all the circumstances.

Mr. FISHER. Mr. Chairman: I have been trying to interpret this provision. I do not know whether I have succeeded or not, but it seems to me that it is susceptible of a peculiar interpretation. The first part of the clause adopted from the present Constitution is designed to put a prohibition upon the purchase of stock in a private corporation, or upon the appropriation of money or the lending of credit to a corporation, association, institution or individual. This is the new part added: "nothing in this section shall prevent the lease or sale by the municipality of a public facility belonging to it on fair and reasonable terms." That means, if I grasp the meaning of it, that if it becomes necessary in order to effect a lease or sale of a facility by a municipality that then the inhibition placed upon the lending of money or the loan of credit to a private corporation does not apply. Therefore, it follows that if a municipality desires to sell its water-works or other public facility, and it becomes necessary in order to accomplish the transaction that the municipality should accept or acquire stocks or bonds of a private corporation or should loan its credit in order to accomplish that purpose, then this inhibition of the present Constitution does not apply. It seems to me as it stands that is the effect of it.

The CHAIRMAN. That is as the Chair understands it.

Mr. CARSON. Mr. Chairman: If your interpretation is correct, particularly of the words that Mr. Connelly has expressed, then his fears are groundless.

Mr. PEPPER. Mr. Chairman: If Mr Connelly and Mr. English thought well of it, I would suggest as a substitute for the words in italics the following: "but nothing in this section shall prevent a municipality from disposing by lease or operating agreement of the facility of public service belonging to it for a rental or consideration dependent upon earnings."

Mr. ENGLISH. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: I do not want to press that if Mr. Connelly and Mr. English, who have given this subject special study, are not prepared to approve it; but it seems to me that the difficulty so far as this section goes, the difficulty with a proposed lease or operating contract is, that in case the return to the municipality is casual and uncertain and dependent upon the results of operation, that the municipality in making the lease would be regarded as having loaned its credit. The way to deal with that is to provide specifically that in the event of such a lease or operating contract having casual and uncertain or contingent returns, that that shall not be such a loan of credit as is contemplated by the constitutional provision; but if that suggestion does not appeal to my friends, Mr. Connelly and Mr. English, I should instead of pressing it join with Mr. English in asking that it be referred back for further consideration.

Mr. CONNELLY. Mr. Chairman: I would move you, sir, that this matter be left open until the first order of business in the morning to see if we cannot reconcile our thoughts, because we want to help.

Mr. FISHER. Mr. Chairman: I second the motion.

It was agreed to.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress.

ADJOURNMENT.

Mr. McCORMICK. Mr. Chairman: I move that the Commission do now adjourn until 10 o'clock tomorrow morning.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 10 o'clock P. M., the Commission adjourned until 10 o'clock tomorrow morning.

Senate Chamber,
Wednesday, February 4, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—17.

Alter, Carson, Connelly, English, Fisher, Gordon, Miller, Munce, Pepper, Perrine, Reed, Stackpole, Thorpe, Tyson, Voll, Warburton, Schaffer (Chairman).

ABSENT—7.

Cuyler, Fox, Kelly, McCormick, Pinchot, Smith, Sulzberger.

The CHAIRMAN. A quorum of the Commission being present, the Commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the journal be dispensed with and the Journal approved.

Mrs. Warburton. Mr. Chairman: I second the motion.

The motion was agreed to.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports from committees at this time?

Has Committee No. 1 anything to report?

Mr. ALTER. Mr. Chairman: The committee has nothing to report.

The CHAIRMAN. Has Committee No. 2 anything to report?

Mr. CARSON. Mr. Chairman: Committee No. 2 will report later on.

The CHAIRMAN. Has Committee No. 3 anything to report?

Mr. THORPE. Mr. Chairman: No report.

The CHAIRMAN. Has Committee No. 4 anything to report?

Mr. PEPPER. Mr. Chairman: No report.

The CHAIRMAN. Has Committee No. 5 anything to report?

Has any member of the Commission anything to bring before the Commission at this time?

LAND TITLES.

Mr. PEPPER. Mr. Chairman: There is one matter that I might bring up at this moment. At one of our previous meetings a report came in from one of the committees, I think it was Committee No. 1, recommending the elimination of the constitutional amendment pro-

viding for a system of registering land titles. It has come to my notice that this is a subject in which there is very general interest in certain parts of the commonwealth; that there is a legislative commission which was responsible for drafting the amendment, and which has been continued in operation from year to year by an act of the legislature; and that this commission is proposing to press for legislation which presupposes such a provision as this in the Constitution. I have familiarized myself somewhat with a subject of which heretofore I had no knowledge, and it seems to me that there is a great public question that is involved in this matter, and I should like to move at the proper time a reconsideration of the action of the Committee of the Whole, and if reconsideration is determined upon, then to move either that the matter be referred back to Committee No. 1, or with the consent of the chairman of that committee to move that the existing amendment be proposed for re-enactment.

The CHAIRMAN. That matter can come up in the Committee of the Whole, and I will see that it does, Mr. Pepper.

COUNTY COMMISSIONERS AND AUDITORS.

Mr. MUNCE. Mr. Chairman: Some time I would like to call up again for reconsideration the matter of the election of county commissioners. I think that we passed that over rather hurriedly and without due consideration the other day. It refers to article XIV, section 7. Now I think that possibly in voting upon that section the other day we were rather confused in meaning as to what we were voting on. At the proper time I would like to call up for reconsideration the report of Committee No. 1 on the question of the six-year term of office, electing two men every two years. I do not know when the proper time will be, but I think that this is a matter that is of so great importance to the counties of the state that it should not be passed over lightly as it was passed over the other day.

The CHAIRMAN. The Chair will recognize Mr. Munce to make such a motion when the calendar of the day is completed.

The CHAIRMAN. Has any member of the Commission anything further to bring up? If not, if there is no objection, the Commission will resolve itself into the Committee of the Whole for the purpose of proceeding with the calendar.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

NEW ARTICLE, SECTION 5.

The CHAIRMAN. The Committee will resume consideration of section 5 of the proposed new article of the Constitution, the report of the special committee on local government being that this section shall read as follows.

The Secretary read the proposed section as follows:

Section 5. The general assembly may provide for the creation of classes of incorporated districts wholly or partly within the boundaries of one or more municipalities and may vest in such incorporated districts one or more of the powers already exercised by the municipalities within their respective boundaries or additional

powers, and may make any power so vested an exclusive power of the incorporated district or a power concurrent with the municipalities wholly or partly within their respective boundaries; provided, that no such incorporated district shall be created or its boundaries extended or its powers increased except by the consent of at least a majority of such electors resident within the proposed boundaries of the incorporated district as shall vote on the question at an election which shall be held as may be provided by law.

On the question,
Will the Committee adopt the report?

INCORPORATED DISTRICTS.

MR. ENGLISH. Mr. Chairman: May I suggest at this time that an effort is being made to agree on a section which will reconcile several apparently conflicting views, and a gentleman presented a substitute yesterday for this section. I think we might save time to pass this section for the moment and to proceed with the calendar where we left off last night.

THE CHAIRMAN. If there is no objection, the consideration of section 5 will be passed for the present. The Chair hears no objection and the section will be passed.

NEW ARTICLE, SECTION 21.

THE CHAIRMAN. The Committee will resume consideration of section 21 of the proposed new article of the Constitution, the report of the special committee on local government being that section 7 of article IX of the present constitution be dropped, and as amended to become section 21 of this article.

The Secretary read the section as follows:

Section 21. The general assembly shall not authorize any municipality to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual; but nothing in this section shall prevent the lease or sale by the municipality of a public facility belonging to it on fair and reasonable terms.

On the question,
Will the Committee adopt the report?

MR. ENGLISH. Mr. Chairman: I should like to offer a substitute for this section.

THE CHAIRMAN. The substitute will be received.

The Secretary read the substitute as follows:

Section 21. The general assembly shall not authorize any municipality to become a stockholder in any company, association or corporation, or to obtain or appropriate money for or to loan its credit to any corporation, association or individual, except that by general law the state may authorize municipalities to loan credit to public service companies for the construction, leasing, maintenance or operation of public service utilities.

On the question,
Will the Committee agree to the substitute?

EXTENSION OF MUNICIPAL CREDIT.

MR. FISHER. Mr. Chairman: I would like to hear from Mr. English, just what he has in mind to accomplish by his amendment.

MR. ENGLISH. Mr. Chairman: The substitute was inspired in the first place by the apparent inadequacy of the language in the original report as shown by the criticism that arose here last evening,

and in the second place, in order to meet a situation that is becoming increasingly manifest, not only in Pennsylvania, but everywhere throughout the United States. It is apparent to everybody, sir, that a revolution is taking place in the street railway transportation business; that nowadays it is impossible to secure from the ordinary sources money necessary to give to the communities the additions to their street railway facilities which their growth demands. Heretofore as long as it was possible to get from the revenues of the street railway companies a fair return on their investment in addition to operating expenses, it was possible to secure credit from private sources necessary to make extensions. That day, I take it, is passed, and as evidence of that we have the effort in the city of Philadelphia to construct the necessary facilities by securing the purchase or rather the construction cost from the public treasury. I believe that in the future some such understanding must be arrived at between the public service on the one hand and the community and the public service on the other hand. A great many years ago, in the city of Cleveland, a situation of the same sort arose, and a contract was entered into between the railway company and the city, which is still in effect, by which the city guaranteed to the company a fixed return on a fixed capital, which was agreed to by contract, in consideration of the city's being given the right to regulate the rate of fare and the service of the company. I believe that through all of this chaos that has overtaken the street railway transportation, possibly the city of Cleveland has stood out as a very conspicuous example of stability, with the result that because of this contract, and because of the partnership between the municipality and the company, it was possible to give the people the facilities that they demanded, and at the same time secure to the company a fair return on its investment. It is possible that in the future in Pennsylvania some such arrangement may be found advisable as the result of experience and that the communities of Pennsylvania may have, if possible, a combining of the advantages of public ownership, or control at least, with the advantages of private operation.

That sort of thing would be entirely possible within the meaning of this section. It would not be possible, however, unless the section were amended, because as it stands now it is an absolute prohibition of the lending of credit in any form by the municipality to any sort of corporation or individual.

Mr. ALTER. Mr. Chairman: I am heartily in accord with what has been said by the gentleman from Erie, growing as it does out of his wide experience in matters relating to this subject. I have been for the last year particularly close to the receivership of the Pittsburgh Railways Company, and I know the problems which those receivers have had to meet. In these days when operating expenses have grown so enormously that they eat up the greater part of the receipts, and when the credit of nearly every large street railway system in the country is so impaired that it is impossible to get new capital invested in it, those who are responsible for maintaining the public service rendered by these corporations find themselves in an impossible situation. Extensions are needed to be made, equipment is needed in order that the public may be adequately served, and yet it is impossible to do these things out of the income, and equally impossible to enlist the necessary capital with which to cover the ex-

pense. There is no relationship closer than that between the municipality and the street railway system which serves the people of the municipality. If the street railway system is crippled or becomes inadequate, the life of the people of the community is handicapped, all their operations are handicapped, and therefore it seems to my mind clear that it would be proper in the organic law to permit the legislature from time to time in its wisdom, under such regulations as it may prescribe, to authorize municipalities to come to the rescue of their own people, which this would do.

On the question recurring,

Will the Committee agree to the substitute?

It was agreed to.

NEW ARTICLE, SECTION 22.

The CHAIRMAN. The next section in order for consideration is section 22 of the proposed new article of the Constitution, the report of the special committee on local government being that sections 8 and 15 of article IX of the present Constitution shall become section 22 of this article.

The Secretary read the proposed section as follows:

Section 22. A municipality shall have the power to incur indebtedness to an amount not exceeding ten per centum upon the assessed value of the taxable property therein, but the general assembly may by law reduce or otherwise further limit such power.

A municipal ordinance incurring a new debt to an amount in excess of two per centum upon the assessed value of the taxable property within the municipality shall be submitted to the electors at a public election in such manner as shall be provided by law, and shall become valid when approved by a majority of the electors voting thereon. An ordinance of a county, township or borough having a debt in excess of seven per centum upon a taxable property therein incurring a new debt shall become valid when approved in like manner by three-fifths of the electors voting thereon.

In calculating the indebtedness of a municipality for the purpose of ascertaining its borrowing capacity there shall be deducted from the indebtedness and disregarded in the calculation:

(a) The amount of any indebtedness incurred for public improvements secured by liens on the properties acquired and imposing no municipal obligation whatever.

(b) Any debt incurred to acquire public improvements, provided the net income derived from the property acquired for the period of five years immediately preceding its acquisition shall have been sufficient to have paid the interest and sinking fund charges for five years on such indebtedness.

(c) An amount equal to that capital sum which will yield at the current rate of interest and sinking fund charges an annual revenue equal to the net revenue received by the municipality from any public improvement during the past preceding fiscal year, provided the debt incurred for the acquisition of the property has not been deducted under the provisions of clause (b) hereof.

On the question,

Will the Committee adopt the report?

MUNICIPAL DEBTS.

Mr. CONNELLY. Mr. Chairman: I was going to ask if the Committee would pass this for the present and permit it to lie over until the first part of the week in order to have a substitute which I will endeavor to place in the hands of each of the Commissioners before the meeting next week. It seems to me that section 22 is too narrow, inasmuch as it gives ten per cent and allows the legislature to reduce or otherwise limit such power. That is not the law today. I am afraid only by judicial interpretation it is the law. I am afraid it will cripple many of the municipalities of the state which have

undertaken or contemplated to undertake large public improvements, and then again it seems to me on the next page in calculating the nature of the debt there are other things that must be added to this. On the whole, while an effort was being made in this section to try to cover every city, borough, county, township and school district in the state as well as the classification of all cities, it seems to me that some of the sections, particularly section (c), would have the effect, as I read this section, at the present time of crippling the public improvements contemplated in Philadelphia, which were based on the constitutional amendment passed November 4, 1918, on page 52 of the Compilation. An act of assembly was passed at the last session of the legislature by which in Philadelphia there was excluded from the public debt some twenty-eight or thirty million dollars to be used for water supply. I only want to make this general statement at this time so that when the suggested amendment or proposal to take the place of the report comes before the Commission they will understand the viewpoint to be expressed.

Mr. PEPPER. Mr. Chairman: May I ask Mr. Connelly, through you, whether it would be possible for him to suggest the modifications that he has in mind in time to have them considered at the opening of the afternoon session today? If I correctly understand the purpose of the Chair, it is that this body shall complete its preliminary work by the close of next week's session. If that is to be done, it seems to me that we must utilize every bit of available time today, because in looking over the various matters which will have to be disposed of next week, it looks to me as if there were a good many things which will require consideration, and debate. It may be that Mr. Connelly cannot do that, and if so, I have no suggestion to make.

SECTION 22 OF NEW ARTICLE POSTPONED.

Mr. CONNELLY. Mr. Chairman: I tried to do it yesterday, but I think it will take some considerable time to work it out. I cannot do it by noon. I move that further consideration of this section be postponed for the present.

Mr. PEPPER. Mr. Chairman: I second the motion.
The motion was agreed to.

NEW ARTICLE, SECTION 23.

The CHAIRMAN. The next section in order for consideration is section 23 of the proposed new article of the Constitution, the report of the special committee on local government being that sections 3 and 10 of article IX be dropped from the present constitution and shall become section 23 of this article.

The Secretary read the proposed section as follows:

Section 23. A municipality shall not incur any indebtedness to run for more than fifty years and shall at or before the time of incurring such indebtedness provide for the collection of an annual income tax sufficient to pay the interest and also the principal thereof at maturity and shall create a sinking fund which shall be inviolably pledged for the payment thereof; provided, that certificates of indebtedness or other obligations to mature within the current fiscal year may be issued in anticipation of the collection of current revenues.

On the question,

Will the Committee adopt the report?

LIMITATION OF MUNICIPAL INDEBTEDNESS.

Mr. CONNELLY. Mr. Chairman: The section as read down to the word "provided" carries out the present Constitution, but the words, "provided, that certificates of indebtedness or other obligations to mature within the current fiscal year may be issued in anticipation of the collection of current revenues" strikes me as an unnecessary provision there because that can be provided for as it is now by general law. Mr. English challenges the accuracy of that statement in that in Philadelphia, under its present charter provisions, it can issue for current purposes two million dollars. It can under the act of 1874 have a period of four months to incur obligations for two million four hundred thousand dollars, and it does not strike me that it belongs in this provision of the Constitution as here written, and I would move to strike out the words from "provided" down to "current revenues."

Mr. ENGLISH. Mr. Chairman: I should not like to see that motion prevail. A great many curious things may be done in Philadelphia, but notwithstanding that fact, the existing section of the Constitution provides that no indebtedness may be incurred without two things being done; first, the assessment of taxes, and second, the creation of a sinking fund for the retirement of the indebtedness at maturity. Now it happens that in the ordinary administration of municipal finances, especially in third class cities, the situation is apt to arise—

Mr. CONNELLY. Mr. Chairman: If it affects third class cities, in view of Mr. English's statement, I withdraw my motion.

Mr. ENGLISH. Mr. Chairman: I will complete by statement for the information of the Committee, if I may. The appropriation is passed at the beginning of the year; the tax levy is made at that time, but if the taxes are not paid early, prior to May or June, there is an interval of three or four months during which it is necessary to carry on the operation of the municipal government without any money coming into the treasury. Now, it has always been our thought that a city of the third class, and I believe any city of the commonwealth, incurring an indebtedness, no matter for what period of time, must provide for the taxes and the sinking fund. Therefore, a municipality would not be likely to go to the bank and borrow money in anticipation of the current revenue. This section was suggested simply to take care of that period of three or four months during which time it may be necessary to borrow money in order to carry on the ordinary operating expenses of the city, and this reconciles such procedure with the Constitution.

Mr. ALTER. Mr. Chairman: I move to strike out the word "income" in the fifth line of this proposed section, so that it will read, "provide for the collection of an annual tax," instead of "provide for the collection of an annual income tax."

Mr. ENGLISH. Mr. Chairman: I agree to that. I do not know how that word got in there. I did not notice it before. I second the amendment.

The amendment was agreed to.

On the question,

Will the Committee adopt the report as amended?

Mr. PEPPER. Mr. Chairman: I should like to inquire of Mr. English and of Mr. Connelly whether there is any room for provision in the alternative for bonds secured by an accumulated sinking fund and bonds which require no sinking fund because they mature in series at different times throughout the whole period contemplated by this financial transaction. It seems to me that there is a great deal to be said in favor of leaving the provision flexible so that the financing can be done either through bonds with remote maturity and accumulated sinking fund or bonds maturing at short intervals in series determined for redemption either by lot or by provision of the original instrument. Now, if it will not in any way conflict with the purpose of the mover of the amendment, I should like to propose a modification of this section for the importance of which I have the authority of the director of city transit in Philadelphia, who has made a careful study of the subject of serial bonds. He is of the opinion that we should be left free to do our financing through that medium rather than the other. The amendment would take this form; to substitute after the words "which the" the words "provide for the collection," and so on. The section would then read: "A municipality shall not incur any indebtedness to run for more than fifty years and the payment of the principal of any debt, including the interest thereon, may be equally distributed over the period for which the indebtedness is to run or the municipality shall at or before the time of incurring such indebtedness provide," and so on.

The CHAIRMAN. Provide for what?

Mr. PEPPER. Mr. Chairman: That would follow "provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof at maturity and shall create a sinking fund—" In other words, it leaves it optional whether or not the financing shall be done by a series of bonds which from their nature require no sinking fund on account of their successive maturities at fixed dates in the near future, or whether the financing shall be done on the basis of long-term bonds with a sinking fund provision.

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. CONNELLY. Mr. Chairman: That was one of the thoughts that I had in my mind in submitting, as a basis of the proposal for next week, the right of a municipality to issue these long-term bonds for fifty years, which provides for the sinking fund and the levy of the taxes, beginning the first year as provided for by law, also the right to issue serial bonds. Now, there has been a very wide diversity of thought as to the difference between the two loans. I had a number of figures prepared when we were considering this section.

Mr. PEPPER. Mr. Chairman: Then it would fall in with Mr. Connelly's purpose if the present amendment were not pressed and the matter were allowed to lie over until the proposed amendment is offered?

Mr. CONNELLY. I would rather, if it is agreeable to you, because then I think the Commissioners can better understand what I am trying to arrive at.

Mr. PEPPER. Mr. Chairman: I withdraw by amendment.

Mr. FISHER. Mr. Chairman: I withdraw my second.

SECTION 23 OF NEW ARTICLE POSTPONED.

The CHAIRMAN. If there is no objection, further consideration of this section will be postponed for the present.

NEW ARTICLE, SECTION 5.

The CHAIRMAN. We will resume the consideration of section 5 of the proposed new article, the report of the special committee on local government being that this section shall read as follows:

The Secretary read the proposed section as follows:

Section 5. The general assembly may provide for the creation of classes of incorporated districts wholly or partly within the boundaries of one or more municipalities and may vest in such incorporated districts one or more of the powers already exercised by the municipalities within their respective boundaries or additional powers, and may make any power so vested an exclusive power of the incorporated district or a power concurrent with the municipalities wholly or partly within their respective boundaries; provided, that no such incorporated district shall be created or its boundaries extended or its powers increased except by the consent of at least a majority of such electors resident within the proposed boundaries of the incorporated district as shall vote on the question at an election which shall be held as may be provided by law.

On the question,

Will the Committee adopt the report?

Mr. ENGLISH. Mr. Chairman: May I at this time offer a substitute for section 5?

The CHAIRMAN. The substitute will be received.

The Secretary read the substitute as follows:

Section 5. The general assembly in order to facilitate public works for the benefit of more municipalities than one may provide for the creation of classes of incorporated districts which may extend over more than one municipality and may vest in such incorporated district one or more of the powers already exercised by the municipalities within their respective boundaries and may make any power so vested an exclusive power or a power concurrent with the municipalities wholly or partly within their respective boundaries; provided, that no such incorporated district shall be created or its boundaries extended or its powers increased except by the consent of at least a majority of such electors resident within the proposed boundaries of the incorporated district as shall vote on the question at an election which shall be held as may be provided by law; provided further, that no incorporated district shall be created entirely within the boundaries of a city or borough.

On the question,

Will the Committee adopt the substitute?

INCORPORATED DISTRICTS.

Mr. FISHER. Mr. Chairman: May I ask Mr. English to explain what the difference is between his proposed amendment and the one offered yesterday?

Mr. ENGLISH. Mr. Chairman: In the discussion yesterday the point was brought out by the gentleman from Philadelphia, Mr. Connelly, that the draft as submitted by the committee would make it possible for the legislature to create within a municipality an independent municipal district to which might be referred some of the municipal powers of the city, and it was stated, I think, that in the city of Philadelphia a commission might be created to which could be delegated control of the police of the city or something of the sort. It was in order to meet that criticism that the last proviso was added to the section, "provided further, that no incorporated district shall be created entirely within the boundaries of a city or borough;" and, further, to meet the criticism of the gentleman from

Allegheny, Mr. Alter, that perhaps there ought to be some kind of definition of the purpose of powers of such municipal districts, in a clause at the beginning of the section, I added the words "in order to facilitate public works for the benefit of more municipalities than one." Those are the two changes, sir, that we made.

Mr. FISHER. Mr. Chairman: I just want to call attention to the words in the second line, "more municipalities than one." I wondered whether or not something might be adopted that would more aptly express the intent and purpose and not leave some part of the clause to misinterpretation. I move to insert the words in lieu thereof "several municipalities or parts thereof." I withdraw that and make it in this form; substitute the words "two or more municipalities."

The CHAIRMAN. Is the amendment accepted by Mr. English?

Mr. ENGLISH. Mr. Chairman: I think we will be very glad to accept the gentleman's suggestion. A situation might arise, however, in which it might be necessary to create a municipality of this kind comprising a single existing municipality and part of an adjoining municipality which, of course, would be prohibited by this proposed change. If the gentleman insists on this substitute of his amendment, I will be glad to defer to his judgment.

Mr. FISHER. Mr. Chairman: I think Mr. Connelly has something in mind that will obviate the objection later on, so I will withdraw my amendment.

On the question recurring,

Will the Committee adopt the substitute?

It was adopted.

ARTICLE XV, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article XV of the Constitution, the report of the special committee on local government being that this section shall be omitted.

The Secretary read the section as follows:

Section 1. Cities may be chartered whenever a majority of the electors of any town or borough having a population of at least ten thousand shall vote at any general election in favor of the same.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVI, SECTION 7.

The CHAIRMAN. The next section in order for consideration is section 7 of article XVI of the Constitution, the report of Committee No 4 being that this section in alternative form shall read as follows:

The Secretary read the section as follows:

(1) Section 7. Shares of stock having par value shall be issued only for the equivalent of such par value in money, labor done or property actually received; but, subject to such provisions respecting public notice as may be made by the general assembly, a corporation may issue additional full-paid shares for a consideration in money, labor or property equal to the established market value of its shares theretofore issued. Neither the stock nor indebtedness of corporations shall be increased except in pursuance of general law or without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after thirty days' notice given in pursuance of law.

(2) Section 7. Shares of stock having par value shall be issued only for the equivalent of such par value in money, labor done or property actually received. Neither the stock nor indebtedness of corporations shall be increased except in pursuance of general law or without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after thirty days' notice given in pursuance of law.

On the question,

Will the Committee adopt the report?

STOCKS AND BONDS.

Mr. PEPPER. Mr. Chairman: It will be remembered that the first of these alternate forms was reported out by Committee No. 4 and that debate took place. At the request of several members the section was referred back to the committee for further consideration. The point at issue in the debate was whether or not the committee's recommendation was sound, that recommendation being that the general assembly should be authorized to permit the issue of stock at a discount by a going concern whose outstanding stock had a market value less than par. The reconsideration of the matter by the committee leads only to a report presenting the matter again for the Committee of the Whole in alternative form. If the former alternative is accepted by the Committee of the Whole, the original suggestion of the committee will carry and we are still of opinion that that is a wise and salutary provision for corporate financing and that the interest of the public is adequately safeguarded by the provision for public notice. If on the other hand the Committee of the Whole should be of opinion that the practice of issuing stock at a discount by going concerns is not to be sanctioned or encouraged, then the second alternative form might be adopted which omits reference to that subject but which does simplify and clarify the statement of the existing law on the subject of stock and bond issues and provide for a shortening of the period of notice for meetings to authorize increase of stock of from sixty days to thirty days. I move, sir, to bring the matter before the Commission, the adoption of the report of the committee in the form presented by the first alternative.

Mr. REED. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. CARSON. Mr. Chairman: May I ask the gentleman whether the committee has a preference upon the subject, and which one of these propositions do they prefer?

Mr. PEPPER. Mr. Chairman: We stand by our original recommendation, sir. The former of the two is our original recommendation. In deference to the questions that were raised in debate we have brought in an alternative form which preserves some of the features of the original recommendation but omits the authority to issue stock at a discount.

Mr. CARSON. Mr. Chairman: Do I understand that this section 7, which is the third paragraph on page 6 on this calendar, is an exact verbal reproduction of your first suggestion?

Mr. PEPPER. Mr. Chairman: It is intended to be, subject to typographical errors. Is there something which Mr. Carson has in mind? I remember there is one word that should have been changed. Judge Reed suggested that the adjective "current" be substituted for the adjective "established" before the words "market value."

Mr. CARSON. Mr. Chairman: If Mr. Pepper accepts the substitution of the word "current" for the word "established" that meets the only difficulty I had in mind. I declared on the floor that I was not in opposition to the section because I realized that under certain circumstances there ought to be open to corporations seeking funds in the market an opportunity of borrowing money without being limited to the par value of shares fixed arbitrarily.

The CHAIRMAN. The Chair does not understand that this involves the question of borrowing money. The Chair understands the proposition to mean that corporations may issue stock after public notice for less than par value. Of course, there is a no par value statute in Pennsylvania now permitting the issuance of stock having no par value. This permits, as the Chair understands, the issue of stock for less than the par value.

Mr. CARSON. Mr. Chairman: That I understand, and they have substituted the word "current" for the word "established" market value. I queried the definiteness of the word "established," and after the debate Judge Reed accepted the suggestion of the word "current." Now, if that be adopted then I have nothing further to say before voting for the proposition.

The CHAIRMAN. The understanding of the Chair is that the word "current" is to be substituted for the word "established."

Mr. FISHER. Mr. Chairman: Do I understand then that the section as proposed is to eliminate from constitutional regulation the subject of bonds and limit such regulation to the original issue of stock at par? In other words, it seems to me to leave it open for bonds to be disposed of at whatever the market value of money may be, and that this proposal then will restrict the original issue of stock at par, but thereafter in case of increase it may be made without such limitation. The increase of stock may be issued at whatever the market price may be at the time of issue.

Mr. PEPPER. Mr. Chairman: This is an attempt on the part of the committee to embody in the fundamental law of Pennsylvania the principle sanctioned as part of the general law of corporations by the Supreme Court of the United States in the case of *Handly versus Stutz*, in 139 U. S., where the right of going concerns to issue new shares of stock at such discount as is represented by the then current market price of the outstanding stock and to have the stock so issued full-paid and non-assessable in the hands of the holder thereof; an attempt, I say, to embody in the law of Pennsylvania that principle. The justification for it is the fact that corporations which have a charter under which their stock has a fixed par and where their financing is such that the issue of stock without par under the no par stock act would be inconvenient or inadvisable, may nevertheless raise the capital needed for their corporate purposes by stock issue instead of being driven, as at present, to borrow money on short-term notes at high rates. The lenders of money have it in their power to impose terms on corporations which are stringent terms and operate to the disadvantage of the existing stockholders. This is a measure for the protection of the existing stock, and a provision for public notice of what is proposed is thought by the committee sufficient in the case of creditors who under the trust fund theory might otherwise contend that the stock was not full-paid and that there was a liability upon the taker thereof for the difference between the

amount actually paid and the par. That is the thought which has prompted this suggestion.

Mr. FISHER. Mr. Chairman: To clear my mind up and perhaps that of some other members of the Commission, may I ask two more questions of Mr. Pepper? First, whether the words "shares of stock having par value" are designed to open the way for the issue of stock having no par value?

Mr. PEPPER. Mr. Chairman: The answer is, sir, as the Chair has already reminded the Committee, that there is on the statute books in Pennsylvania a very important and valuable act authorizing the issue of stock without par value. A question has been raised, perhaps not very seriously, but it has been the subject of discussion, as to whether shares of stock could be issued in Pennsylvania without a fixed par. The purpose of the language to which Senator Fisher has referred is by implication to recognize the issue of stock without par value under the terms of that legislation and then to limit the issue of stock with par value in accordance with the provisions of this section.

Mr. FISHER. The next question I would like to ask is whether or not in your opinion, Mr. Pepper, the language of this section will permit the issue of stock dividends from undivided earnings of the corporation?

Mr. PEPPER. Mr. Chairman: Speaking for myself, that question has not been considered in connection with this section. It seems to me unless there is something that I have overlooked in my analysis that this section would leave that subject precisely where it stands today. I cannot think of any reason for declaring stock dividends at a discount. There is no reason that I can think of why if a stock dividend is to be declared the course which has heretofore been pursued should not continue to be pursued. In other words, I can think of no latitude given to corporations in the case of stock dividends under this section that has not already been given to them under the existing law.

Mr. FISHER. Mr. Chairman: But the matter might be covered under the provision for the increase of stock to the effect that a corporation may issue additional full-paid shares for a consideration in money, labor or property equal to the established market value of its shares. Is that effective to prevent the issue of a stock dividend if a corporation so desires?

Mr. PEPPER. Mr. Chairman: As to that, sir, my answer would be in the negative. It seems to me that the theory upon which a stock dividend is made is not that the consideration for the issue is something different from the consideration which is present in the case of the original issue, but rather that the source of the consideration is undivided earnings of the corporation as distinguished from new capital acquired for the purpose; so that the qualification to which Senator Fisher refers seems to me in no way to restrict the right of the corporation to declare a stock dividend out of accumulated value answering the description in the section.

Mr. GORDON. Mr. Chairman: I would like to inquire of Mr. Pepper if this applies to public service corporations.

Mr. PEPPER. It authorizes, Mr. Chairman, the general assembly to make such provisions respecting public notice as the general assembly may see fit, and the committee understands that under the

power thus conferred the general assembly might make provision for action under this section on the part of corporations, including public service corporations, or might so restrict the conditions under which this section could be availed of as to limit the process to strictly private corporations. In other words, there is in the hands of the legislature a check upon the exercise of the power here conferred.

Mr. GORDON. Mr. Chairman: I do not notice that the proposed amendment puts any check in the hands of the legislature except as to the public notice to be given. The report reads on this point, "but, subject to such provisions respecting public notice as may be made by the general assembly, a corporation may issue additional full-paid shares," and so forth.

Mr. PEPPER. Mr. Chairman: That is what I mean. The thought of the committee is this; that the legislature in making provision for public notice may indicate that corporations of any particular class may do this, and so prescribe that the notice that they may give could be so drawn that the provision in regard to public notice could be availed of only by those that are in the specified class of corporations; but the committee did not know of any reason for anticipating that the legislature would restrict the action of the section to any particular class or classes.

Mr. GORDON. Mr. Chairman: I am opposed to this section and to the principle which it contains. The only change which it makes in the existing law is that it requires less notice for an increase of stock than the present law requires; in addition to that it permits a corporation to issue other stock as full-paid stock for a less amount in money or property than the full amount of the shares. It is true it requires this to be done by a majority of the stockholders, but that is no protection to minority stockholders. As I said when this was formerly under discussion as to public service corporations and all those who charge the public a toll for services, this allows a permanent imposition on the capital stock which has not been full-paid to be issued as full-paid and remain a permanent incubus as though it were full-paid upon the services rendered to the public. For instance, it is too fluctuating; it allows it to be done at the current market price at any time. Who shall determine when the market price shall be desirable? I can conceive how the majority of the stockholders of a corporation should endeavor to increase the capital stock at the lowest period of the stock in the market to secure it at that low price. Of course, directors animated by great zeal for the corporation and for the trust which they represent would not desire this, but unfortunately those who compose the management of corporations are human beings with some of the very undesirable qualities which our poor humanity has. There ought to be no stock issue by a corporation which is not issued on the same terms that the original stock was issued for, and the face of the stock ought to represent verity that it was issued for the full amount named in the certificate. A mere majority might depreciate the holdings of the minority incalculably under this provision. This is legislation intended to cover a present exigency in the condition of finance, an exigency which I hope will soon pass, which I still more ardently hope we will not see again, an exigency arising because of extraordinary conditions which affect all nations and all money markets, and we ought not in these matters which relate to personal liberty hurry into

remedies inconsiderately. We ought not in respect to financial matters be hurried into provisions of fundamental law which will remain ever after the exigency has been passed and may be then utilized for purposes not desirable.

Mr. PEPPER. Mr. Chairman: It is difficult for me to think of a situation in which there is less temptation on the part of the majority stockholders to abuse or defraud a minority than in the situation brought before us by the proposed amendment. The issue of stock at a discount bears as hardly on the majority as on the minority. It is a choice of two evils in finance and will be restored to only when the terms for borrowed money are such as to be disadvantageous to all stockholders. The right of the minority to subscribe to the new stock is a right which is not divested by the proposed section. The right will exist just as it exists now in the case of any other increase of capital. The theory that the majority somehow or other are going to abuse the liberty of issuing stock at a discount as a means of putting the property of the minority into their own pockets does credit to the imagination of the critic; but it seems to me not to coincide with practical experience, or with the principles of financing. Here is a case in which the alternative is between imposing an obligation which outranks all the stock issued and creating an indebtedness to which the minority as well as the majority are subject, the maturity of the indebtedness to be determined by the exigencies of the case, that on the one hand; on the other, the more healthy and normal process of financing operations upon the basis of new partnership capital; that is what it means. It is the old alternative between going forward by creating firm creditors, and going forward by increasing partnership contributions. Wherever the partnership contributions can be increased you have a healthier and more conservative basis upon which to do your financing and transact your business. The chance that the minority will slip something over on the majority is more remote than in any case of corporate financing that you can propose. This is a thing that will be resorted to only when capital cannot be obtained by stock issue on more advantageous terms and only when money cannot be had at anything but ruinous and sacrificial rates. The right of the minority seems to me to be adequately safeguarded by the interlocking interests in the case and the rights of creditors are protected by public advertising. On the whole, it seems to me that the most that can be said against the measure is that in some way not now clear some individuals not yet disclosed for motives not yet ascertainable will do something in a corner which will work to the disadvantage of a minority in a particular case. That kind of a forensic prophecy of evil would destroy the possibility of any kind of forward-looking legislation or constitutional enactment.

Mr. REED. Mr. Chairman: To carry Mr. Pepper's illustration one step further, if you and I were in partnership and after the manner of lawyers our business had been a failure and we wanted to take in another partner, the natural thing to do would be to appraise the assets, and where you and I may have contributed one hundred thousand dollars apiece, if our assets were only worth sixty thousand dollars or fifty thousand dollars, the new partner would come in on that basis; that is his contribution. Now, that is all that is proposed here. There come times in the history of every corpora-

tion, or any set of corporations, when it is impossible to borrow money on any sort of decent terms. Large discounts have to be paid and ruinous rates of interest, and the interest of the stockholders and the creditors, and in the case of public service companies the public, is very much jeopardized. Now, you take the present situation with the chaos in European financial conditions and the steady drop in the dollar value of money of England and France—I do not want to prophesy, but we are on the edge of a tremendous cataclysm—by some miracle they may escape, but if they do not they bring us into it, and you could not sell a corporation bond at any sort of price that would justify a corporation in taking it. You cannot today. No, the people who are interested in a corporation, the stockholders, are interested in preserving it, and it seems to us that having such a situation as that, and we are making a Constitution for a long time if we are making one at all, there will come similar times again, not perhaps like this, not as bad as this, but if they do come, that the people who are interested in the company ought to have the opportunity if they see fit to put some money into it and to take it on the basis of the assets which after all are crudely represented by the established market value. Not crudely either, because generally it is a pretty fair test of what the company is worth. The rights of the minority stockholders are protected, because, as Mr. Pepper said, every minority stockholder is entitled to his share of the stock if he chooses to take it. The rights of the public in the case of public utilities are protected because, as you well know, the Public Service Commission ignores the capitalization entirely and they simply look at the value of the property and adjust the rate of return on the value of the property, not what the stock brought or what the bonds brought; that is a thing that has bothered large corporations in the past. It seems to us not having any special case in mind at all, at least I have none, that there was an opportunity to make our corporation laws a little more elastic.

Mr. GORDON. Mr. Chairman: I do not know whether the illustrations of Mr. Pepper and the gentleman from Allegheny represent the financial status of a corporation borrowing money on bonds or other certificates of indebtedness and a corporation selling its stock for less than par correctly. Money borrowed on bonds or otherwise must be paid out of the income of the corporation. It must ultimately be paid, paid before dividends are paid, and will be paid or the corporation will become bankrupt on the maturity of the obligation; but the stock remains a permanent feature of the corporation. If it is a public utilities corporation it remains stock upon which dividends may be earned and a claim made for the right to earn dividends on the stock, because it is issued, as long as the corporation exists. Now, I conceive and did conceive that there may be times when money can only be obtained on corporate bonds or certificates of indebtedness at a high rate of interest, or probably not at all, in some markets. But, what then? All that means is that it cannot then be obtained in that manner at that time. No calamity may happen to a corporation because of that. If it had to postpone its obtaining of additional capital until a later date or if it had to pay a high rate of interest at that time, what of that? It would simply mean that the dividends available to the existing stockholders might be reduced to that extent, but when the debt was paid the stock would

resume its right to participate in the earnings without a deduction for indebtedness and interest accrued in the manner stated. I therefore do not think that the analogy to an ordinary partnership is correct as to fact or as to legal deductions. The amendment proposed also does not recognize any right of supervision in public service corporations over this matter. So far as it says, it may be done by virtue of a general law passed by the legislature in the future, which seems to exclude the law providing for the existing public service corporation; but in no case, I think, the stock ought to be issued by any public service corporation except dollar for dollar.

Mr. PEPPER. Mr. Chairman: There is nothing in the proposal which in any degree limits or affects the undoubted jurisdiction of the commonwealth in the regulation of public service. That matter is left for the moment just as it stood before. The question of regulation is unaffected, and it must be clear to all of us that the so-called claim to a right to dividends on the par value of stock is a claim that exists only in imagination. There is no such thing. There is not any right to dividends at all, and so far as the permission to make charges in the case of public utilities which will yield a certain rate of return on capital is concerned, it is based entirely on the actual values concerned, and not at all on the paper or par values. No question affecting the public interest in public service companies is here involved. It is not in the least degree different from the case of private manufacturing corporations. With respect to both companies the rights of the minority and the rights of the creditors are safeguarded by the terms of the proposal.

Mr. CARSON. Mr. Chairman: I am very much interested in this, not from the point of view of representing corporations in the stress of circumstances which has been indicated here, but because I do feel that a situation exists which ought to be intelligently dealt with, and when I say "intelligently" I mean harmoniously and sympathetically dealt with, so as to enable them to survive a perilous and a very dangerous situation. Now, Judge Gordon's analysis is acute, is searching, as all of his analyses are; but it seems to me that he has assumed that the present situation contains elements which in point of fact do not exist. So many corporations have been organized in this state in which, while they nominally assert a value, say of a million dollars, and that value is to be paid over in cash, or in property purchased, or something else that might be treated as the equivalent of cash, that in point of fact the par value has no real significance at all. Many situations have been abused by corporations being organized really on their bonds. Bonds are put out on the basis of stock. They are sold by a brokers' syndicate at something like eighty-eight cents on the dollar, and the stock is given as a bonus to the bondholders without any actual value, so far as par value or less than par value being received by the corporation is concerned; but unless you can prove some actual fraud in the valuation fixed by these holders of property and fasten it to the board of directors as an insincere and purely arbitrary action on their part, the courts will not disturb it. Now, I am not quite sure that Judge Gordon has measured the limitation which is placed on the extent of the issue of shares in this provision of the suggested article, "subject to such provisions respecting public notice as may be made by the general assembly, a corporation may issue additional full paid shares for a

consideration in money, labor done or property," equal to what? Equal to the current market value of its shares theretofore issued. Now, if that current market value of shares theretofore issued is down, you still bring to a test the actual pecuniary price which a man is willing to give in the market for the shares which are offered to him. You are not asking him to get into his hands a certificate and pay less than the par value expressed on its face, if in point of fact you limit the issue of shares so designated to exactly the equivalent in value to what the market price will be. Therefore, it seems to me that there is protection under the doctrine of the decision which Mr. Pepper alluded to of the Supreme Court of the United States, in 139 U. S., I think it is, antedating the present crisis in the world's affairs. Therefore, while I am glad there is so vigilant a sentry on the ramparts as Judge Gordon to guard against any fictitious increase of value in rejecting a rate which might be a charge on the public because of the necessity of earning a return on the face value of the stock, yet at the same time I feel that his apprehensions spring rather from an imaginary view of impending dangers than from an actual survey of existing conditions. Therefore, I do not see the danger in this, under the restrictions that have been placed here, which he has stated.

MR. ALTER IN THE CHAIR.

Mr. SCHAFFER. Mr. Chairman: It seems to me that this is a very important proposition that we are now considering, if we are to consider it from the standpoint of the policy of the state. I think the policy of Pennsylvania, the past policy of Pennsylvania, in the creation of corporations has been too narrow. We have driven out of the state hundreds and thousands of corporations by reason of the restrictions that now exist on our statute books, which should have been incorporated in Pennsylvania. Every lawyer here has gone to other states in order to get more liberal charters than can be obtained in Pennsylvania, and in order to be under a more liberal financial policy, so far as corporate organization and control is concerned, than Pennsylvania has afforded. I noticed in last night's paper that Delaware issued last month, I think, more than seven hundred charters. Every week or so the question comes up in the Attorney General's office whether a particular kind of corporation intending to do business in Pennsylvania, all of whose business will be located here, and into which nothing but Pennsylvania capital comes, can be incorporated here and work out the results that are desired, or whether it is essential to go to some other jurisdiction in order to get corporate life. Now, in the management of the business of corporations, in the mingling of the business and local questions which arise, is it not a fact that the thing which confronts lawyers charged with the responsibility of opinions as to corporate finance arises out of these questions, and particularly arises at this time? There are within the circle of my knowledge several corporations which cannot do the things they ought to do because they cannot get the capital to do them. There are four ways to get new capital; first, by the issue of bonds; second, by the issue of notes; third, by the issue of preferred stock; and fourth, by the issue of—I am speaking now of corporations whose legal integrity is unquestioned because they have strictly complied with the law—stock at par value.

Now, you cannot sell stock at par value to new persons coming into the corporation if the stock does not sell at par value. You can, of course, by the creation of preferred shares of stock prefer the new stockholders to all of the old stockholders, but my experience has been that this is a dangerous thing in any corporation, and one of the means of destroying corporate credit, because it is an indication that the corporation in the usual and ordinary ways cannot command the capital for development it ought to have. If the thing is to be done by a note issue under present-day conditions, the bonuses that have to be paid and the extravagant rates of interest that have to be paid are almost a denial of the right to raise money in that way. It is impossible today for corporations to raise any money by means of bond issues because so many of them have closed mortgages, and it is impossible today, as my experience goes, to sell second lien obligations. Now, does this mean anything else in the practical business working out of the proposition than this, that if I am interested in a business, representing the majority of the stock, if you please, and it is essential that the corporation should have a hundred thousand dollars or a million dollars more in order that it may carry out the things that it has in front of it, if it is to be successful, that I go out to the man whom I have invited into the enterprise and ask him to come in with me and to take chances with me, and to take his chance on the basis of what the assets of the company now stand for monetarily? If that is so, if that is how the thing practically works out, if my invitation to him is to come in and take his chances as to whether any dividends are earned at all, because he does take that chance when he comes in with his capital, then do I put him in any worse position than I am in myself, whether I am a minority or a majority stockholder? Because, as Mr. Pepper has said, on every issue of new stock all the stockholders have the right to participate under the law as it is in Pennsylvania, and as it is in Delaware, where I have any knowledge of the subject, all of the stockholders have the right to participate in the new issue in accordance with the holdings that they have. So that in the main my own experience is that money that is to come into the corporate management that would be admitted into the corporation under this provision of the Constitution would come very largely from within the corporation itself. The stockholders then holding stock would be the people in the main, or their friends, who would put the money in, in order that the corporation might go ahead. Now, this liberalizes the grant of corporate powers in Pennsylvania on lines that they have been liberalized elsewhere. Many of us used to go to West Virginia for charters, and many of our corporations used to go to Maine for charters, and many of us used to go to Delaware. The day was when the most fashionable state was New Jersey. New Jersey is not fashionable any more. If there is no danger, and it seems to me that there is no real danger in this because new money coming in would come into the corporation on the same basis as the stockholders hold the securities that represented the value that they put in, that is measured on the existing value of all of the assets of the corporation, it seems to me that there is no danger in that anywhere, and that in that way, by such an amendment as this, we do the direct thing in Pennsylvania. We quit doing this sort of thing by subterfuge, which is a bad thing for everybody. I have no question that the same thought that

is in Judge Gordon's mind would animate members of the legislature when they provide by law as to how this should be done; and the set policy always has been, and it seems to me always will be, to protect the minority interest. The legislature in providing how the new stock shall be issued would see that there is a protection there, and by this method then a corporation that really is solvent—it so happens that I have in mind now a corporation that is really solvent, but that cannot get money anywhere except at rates that are ruinous, they cannot raise money by the sale of stock because nobody will pay par value for the stock—could be and would be saved if it could go out among the men associated with those men who now are in its management and say to them, "You can buy an additional issue of our stock at what its assets make the shares worth, and come in and participate in a chance for the future." Now, if we do that in that direct way, and the direct way that enables corporate managers to go to the public—and it is not often that they go to the public, but seek out their friends and say, "Here is a corporation with assets of a certain amount and we ask you to come in and take stock at a certain value based upon what the assets of the corporation really are worth"—it seems to me it will simplify and make more easy corporate financing and will make more honest corporate financing than is the case today when the same thing has to be done by subterfuge.

Mr. GORDON. Mr. Chairman: I would like to answer the distinguished speaker who has last addressed us. His argument is plausible and candid. He states the corporate exigencies which he seeks to relieve by this legislation. Let me state wherein I think he strays. He has just stated there with the last words that fell from his lips that this amendment permitted a corporation to obtain additional capital from the sale of stock by saying to the purchasers of that stock, "Our assets are diminished to such an extent that our shares are not worth their face value and we therefore will sell those shares to you upon the basis of the real value of our assets and give you full-paid shares of stock such as we have on the distribution of assets in accordance with the present worth." That was his statement. If that were so I would not object to the report of the committee because that would mean the readjustment of all the stock. Let me illustrate by citing a partnership. Take a partnership with a hundred thousand dollars wherein one partner has sixty thousand dollars capital and another partner has forty thousand dollars capital, making a hundred thousand in all, and suppose the assets of that corporation would shrink to such an extent that there would only be fifty thousand dollars worth of assets so that the capital would only be worth one-half of what it would appear on the books. The man who put in sixty thousand dollars would only on distribution be entitled to thirty thousand dollars, and he who put in forty thousand dollars on distribution would be entitled only to twenty thousand dollars. If on that condition new capital were borrowed and another person came in and put in fifty thousand dollars and his capital account were credited with fifty thousand dollars, and the man who had put in sixty thousand dollars, his capital reduced to thirty thousand dollars, and the man who put in forty thousand dollars, his capital reduced to twenty thousand dollars, then we

would have a capital account representing exactly the assets. But here is what this report proposes to do. If a corporation has one stockholder, to make the parallel with a partnership, has one partner who has put in sixty thousand dollars and gets credit for it, and another partner who put in forty thousand dollars and gets credit for it, and another comes in and says, "I will put in twenty-five thousand dollars but you give me a book-entry of fifty thousand dollars capital;" and that is done at times in corporations; that is what this report seeks to authorize to be done according to law. And though probably private corporations do not touch the public in any respect, and might be allowed to treat their assets as they please and make gifts as they please, corporations which deal with public franchises and serve the public and get their money from such service ought not to be allowed to do that; and that is exactly what this bill allows to be done. Let us see. We will present the illustration which the learned gentleman from Delaware there recognized. I recall a time in the history of the Philadelphia Rapid Transit Company when its stock was not selling at twenty per cent of its par value, not more than twenty per cent. Under the law, as only part of the amount of the stock had been paid in, there could not be a new stock issue, and the stockholders had to continue paying in until they had paid the full amount of thirty millions of capital stock of the Philadelphia Rapid Transit Company. Let us suppose this law now proposed had been in operation, then by this system of accommodating finance there might have been an additional thirty millions of capital stock issued at the then market value, one-fifth the face value of the stock. It might have been sold, and this thirty million dollars worth of stock, of which only possibly six millions had been paid, would have remained a part of the capital stock of that corporation indefinitely, upon which tolls would have been exacted from the public in return for public service.

Now, I do not want to use a word that is popular in currency and has a clear popular significance, because it might be said that I was reflecting upon persons or corporations; but "watered stock" has a wide popular meaning, and it has a meaning which has caused great antagonism, especially to public service corporations, especially to public service corporations in the city from which I come, especially public service corporations some of which I have the honor to represent, and the objection in the public mind and the hostility to these corporations and the obstruction to the public confidence in them is that the issues of capital stock do not represent real money put into the corporation, but are to a considerable extent mere paper value, watered stock. And what has been done by subterfuge in the past by these corporations, this amendment would allow to be done in the future by all corporations openly and not by subterfuge. Should it be allowed? My first inquiry on this question was to ask the gentleman from Philadelphia if this amendment applied to public service corporations, and he said that it did. I oppose it with respect to public service corporations. It seems to me the same moral and financial impropriety would exist even as to private corporations, but the public would have no claim to set up any rule of conduct with respect to private individuals. But with respect to public service corporations of the state, the rule set up forty years ago when this Constitution was adopted, and nothing has

occurred in the last forty years to alter the ethical proposition in the present Constitution, the rule set up was that no certificate of stock should be issued except for money, the full amount of money represented in the certificate of stock. I ask if that ethical proposition as to the government of corporations shall continue in the fundamental law.

Mr. SCHAFFER. Mr. Chairman: All that I have said is on the assumption that the law applicable to the issue of stock by public service corporations would remain as the law now is. I join in the thought of Judge Gordon that the cleavage that the public policy has made as between public service corporations and private corporations ought to be maintained, and I think that it will be maintained more rigorously in the future, and I take it for granted that in the adoption of such an amendment as that now suggested the law will be recognized to be the law as it now is. That is to say, the public service law now provides that no stock issues can be made by a Pennsylvania corporation save with the assent of the Public Service Commission, and they ought not to be. I will go the very limit on that; but even as to public service corporations it is a better thing, it seems to me, that there should be as to them the leeway that this amendment would give to them, in order that they may raise money to discharge their public functions with the assent of the Public Service Commission, than that they should be held down rigidly and nailed to a proposition that makes all their financing impossible except at rates that are absolutely ruinous. I think, and I have no doubt that Judge Gordon thinks, and that all the lawyers here think, that public service corporations of today are being strangled because they cannot get the absolutely essential money that is needed to enable them to meet the public demand that is made upon them. Now, it seems to me that however they get the money, whether they get it in the form of a loan, whether they get it through an issue of preferred stock, whether they get it in the form of stock issued below par, however they get it, if it is supervised by an authority of the state, that it is far better than to say that they should not be permitted to get it at all, and in the final analysis it seems to me, in the hasty thought I am giving to the proposition on my feet, that it is better for the public that the small or the great public service corporations should get the capital that is to come to them in times of stress as fluid capital, as capital that you cannot exact interest upon, than it is that they should get it in that form that they must earn the money or provide the money to pay the interest, or have the other alternative of going into bankruptcy. That is to say, a corporation, a public service corporation, and Judge Gordon and I happen to represent the same interests in certain public corporations, it is better for that corporation, under proper state regulation, it seems to me, to have twenty-five million dollars, or fifty million dollars, or any other given large sum of capital poured into its treasury by men who are willing to wait for dividends until the corporation can earn the dividends. And it is better for the public that that shall be the policy of financing with it than that the twenty-five or fifty millions of dollars which the exigencies of the present or future requirements make necessary should be poured into the treasury at exorbitant rates of interest, when you take into account the bonuses and the commissions that have to be paid. They run as high as twelve per

cent and even higher, and they form a present tax as against every public rider and every public user of the enterprise. Now, I believe that the financing of public utilities companies would be safeguarded and overlooked by competent state authority, and that no harm could be done there because the Public Service Commission would not permit the improper or improvident acquiring of money by public service corporations. If I am right on that proposition and if the public service companies can be eliminated from the broad proposition that is involved in this amendment because of the law as it exists today, then what we are really doing is to provide a method by which trading companies, commercial business corporations in Pennsylvania, can finance themselves, honestly finance themselves, where today that cannot be done. And it seems to me that if that is the policy of the state to permit its trading and commercial business corporations to honestly finance themselves on the basis of real conditions as they exist, then we will invite in Pennsylvania or we will keep in Pennsylvania all the Pennsylvania commercial trading corporations that ought to be here, because their business is here, and we will invite to come back to the state those of them that have gone outside and incorporated elsewhere because the policy of the law of other states was more liberal than ours. I would not for a moment assent to this amendment if my opinion, whatever it may be worth, was not that public service corporations are taken out of its effect in so far as and to the full limit that the Public Service Commission would safeguard and guarantee against any issues of stock that ought not to be made in the public interest.

Mr. GORDON. Mr. Chairman: May I ask the Attorney General to point out just one thing?

Mr. SCHAFFER. Mr. Chairman: Certainly.

Mr. GORDON. Mr. Chairman: If it would be a protective measure I would like to have the Attorney General point out wherein this amendment requires the approval of anybody except the corporation.

Mr. SCHAFFER. Mr. Chairman: My thought about it, and I would answer without absolute assurance at all, was what the laws as they exist when this Constitution goes into effect will continue to stay, and as the law requires public service companies now to get the assent of the Public Service Commission before stock can be issued, that would be the continuing law of the state, and unless that law were repealed it would continue just as it is today. It might be that it would be a good thing to put in an amendment to safeguard it entirely; that would require the public service companies issuing stock to first get the consent of the Public Service Commission, but it seems to me that that is unnecessary if I am right on the other legal proposition.

Mr. PEPPER. Mr. Chairman: That question was not overlooked by the committee. We have consistently followed the course of the Committee of the Whole of omitting to specify the Public Service Commission in any of the provisions that we have proposed to be embodied in the Constitution, on the theory that the time was not ripe to crystalize our existing form of public service regulation by making the Public Service Commission a constitutional body; but the committee is of the opinion that the public service law is in no way affected by what is here proposed, and that it will continue to be true in the future as in the past that certificates of public con-

venience and other safeguards will be essential in the case of public service corporations before they can increase their capital stock or their bonded indebtedness on any terms, and that the whole subject of regulation of public service is left by this proposed amendment in precisely the position that it is in now, within the purview of the state and subject to its far-reaching jurisdiction.

Now, Mr. Chairman, I should like on behalf of the committee to express, if I may borrow Judge Gordon's dialectic method, what under other conditions would be resentment at the suggestion that the report of this committee has behind it any insidious or unworthy purpose or that it is in the view of the committee a proposal to sanction the practice of issuing "watered stock." The end that the committee had in view was to make more strict the law of Pennsylvania on the subject of real value behind stock issues and to make the apparent or nominal value of a share correspond more closely to its real value than has been the case in the past. The illustrations that have been used by Judge Gordon as illustrations of watered stock are those which depend for their value upon the disparity between the real consideration paid for the stock in the cases that he refers to, and the nominal or par value of the stock which was issued as fully paid for an inadequate consideration. The real reason why the stock of so many public service corporations which has been outstanding for a long time has dropped in the market is in many instances that the stock when originally issued did not correspond with the value received, and when a salutary public policy limited the returns to earnings on actual value, as distinct from the nominal or par value, the unworthy thing they had done in the issue of excessive stock was found to be a boomerang, and the stock could no longer draw the fat dividends beyond the value it represented, and it began to decline. What we are proposing is that there shall be an equivalence between the real value of a share and its nominal value. The no par value act has helped a great deal in introducing reality into our corporate stock organization. This amendment will go farther in the same direction. We have strengthened and simplified the provisions of the Constitution in regard to original stock issues in the interest of sound corporate ethics, and we are now proposing that in case of subsequently issued stock there shall be public notice of the fact that there is no water in the stock. So far from being a provision which will facilitate the issue of watered stock, it is a provision which will by public notice call attention to the fact that there is no water. Water in stock, Mr. Chairman, is the name given to that fictional quantity between the actual value received and the larger par value of the shares. Water is present in cases where there is a real or fancied obligation to inflate the value of the consideration to make it appear to be equivalent to the par of the certificate. Once make it possible to create public knowledge of the fact that the thing for which the certificate is issued has a specified value which is less than the par stated in the certificate, and you advertise publicly that there is not any water in the stock, and you have your whole transaction down to a bed-rock basis of actual fact. There is no use in trying to get away by argumentation from the plain facts of capital contributions in corporate transactions; they are the same thing as contributions of capital in unincorporated partnership, with nothing but a difference of organization to distinguish the one from

the other. I think that is true with regard to relationships between contributing partners, and true also with respect to relationships between the contributing stockholders in companies in which assets are divided upon the basis of capital contributions, which was the case put by Judge Gordon. That is the case commonly provided against in partnership articles by the provision that losses of capital should be borne in the proportion in which the participants share the profits. That is precisely what happens in this case. It is precisely what will happen. This is a measure which tends to produce reality as distinct from fiction, and that is as much of an insurance as a constitutional or statutory provision can be, that there be no water in the security, that there will be no subterfuge, and that there will be none of that room for unworthy corporate devices in the matter of finance which has been a discredit to so many corporate organizations in this state in the past. I hope very much that the report of the committee will prevail.

Mr. FISHER. Mr. Chairman: It seems to me that from the discussion there have arisen two difficulties with which we are confronted in considering this provision of the Constitution. The one in the minds of the framers of the provision is the obstacles which we might place in the way of the proper financing of legitimate enterprises by placing too great constitutional restrictions upon their operations; the other difficulty, suggested by Judge Gordon, of permitting illegitimate issues of corporate securities that may arise from the watering of stock. Now, they are both real problems. Is it safe for us to place a binding restriction so tight upon the financial operations of corporations that it will react upon legitimate business? I think that is the problem that the committee had in mind when they framed this provision. On the other hand, Judge Gordon raises what has been a crying evil not only in Pennsylvania, but in the country at large. In my position I am perhaps brought more closely into contact with that evil than are other members of this Commission. The country now is flooded with issues of fraudulent stocks. In every newspaper you pick up you will find pages of advertisements phrased with the most alluring inducements inviting the public to make purchases of those stocks. Every sound business man knows that they are largely fakes. Now, how can we meet that situation, and at the same time keep in mind the difficulties which the framers of this provision had in view? It seems to me that we cannot place too great a restraint in our Constitution upon the general operation of corporate financing in order to meet the other evil which Judge Gordon has in mind. I again call the attention of the Commission to the fact that the provision in the present Constitution does not require corporate securities to be issued at par. So far as that is concerned, the proposal of the committee is preferable to the terms of the present Constitution. The old provision merely requires that the stock or the bonds shall be issued for money, for labor or for property, leaving it as a matter for legislative action to determine whether they shall be issued at par. That whole subject, as I take it, today is a matter subject to the action of the legislative body of the state. Now, this present provision makes the original issue of stock, or requires the original issue of stock, to be at par, so that in the organization of any corporation you are going to avoid any watering of the original issue of capital stock. But thereafter you are confronted with the

difficulties that every business man and every business concern must later on meet, due to the fluctuating conditions of the money market, and due also to the changing conditions of business itself. The management of the business may not be such as it should be and it may fall into hard lines. When a corporation engaged in a legitimate line of business finds itself confronted with financial difficulties and is faced with the necessity of procuring new capital, it must devise ways and means based upon its particular situation and surroundings. Now, if you put a restriction in the Constitution requiring that future issues of corporate securities, whether stocks or bonds, and if stocks, whether common or preferred, must be at par, it is tantamount, in my opinion, to forcing a great many business enterprises into bankruptcy. We all know that it would be an impossibility for great business enterprises to place their issues at par at all times. I have in mind an issue of bonds, with which I was concerned in a very large amount, for one of the large transportation companies operating in this country. They issued a six per cent refunding bond just at the outbreak of the war. That was underwritten by the bankers at par. It seemed to be a very attractive sort of issue and on the market it reached the price of one hundred and nineteen. Those bonds will only bring ninety-two on the market today. This is merely illustrative of what is going on with the issues of all the great business enterprises of the country. Now, you cannot meet that condition with the rigid restrictions of a Constitution and have safety and freedom of operation by the business concerns of the country. Well, what is the remedy? I think a safe way to do is to allow corporate issues largely to the regulation of the legislature. Now, I can say to the members of the Commission that the evil which Judge Gordon has in mind is now under consideration. We have accumulated all the blue sky laws in force in all the states of the Union. We have under advisement the preparation of some sort of a law that will eliminate, so far as law can eliminate, the evils which Judge Gordon has had in his mind in the discussion. I think myself that we can safely adopt the suggestion offered here by Mr. Pepper's committee.

On the question recurring,

Will the Committee adopt the first of the alternative sections?

It was adopted.

ARTICLE XVII, SECTION 2-A.

The CHAIRMAN. The next section in order for consideration is section 2-A of article XVII of the Constitution, the report of Committee No. 4 being that section 12 of article XVI be dropped from the Constitution and become section 2-A of article XVII.

The Secretary read the section as follows:

Section 2-A. Any corporation organized for the purpose shall have the right to construct and maintain lines of telegraph or telephone within this state and to connect same with other lines.

On the question,

Will the Committee adopt the report?

TELEGRAPH AND TELEPHONE COMPANIES.

Mr. PEPPER. Mr. Chairman: Let me say by way of explanation that the Commission will remember that the committee recom-

mended the transfer from article XVI to article XVII of all provisions relating to public service corporations, as distinct from the provisions relating to private corporations. In pursuance of that policy the provision in article XVI relating to telegraph companies was stricken out, with the expectation that it would be transferred in its present or in an amended form into article XVII. That second step was, however, overlooked when we were drafting article XVII. The committee now recommends the insertion in article XVII of the provision which was omitted from article XVI with two amendments; one an amendment including telegraph companies in the same category as telephone companies, and the other omitting that portion of the section which contained a prohibition upon consolidation, because the subject of consolidation of public utilities has already been dealt with by the Committee under the general provision applicable to all public service corporations. The section which is proposed to be incorporated in article XVII, to become section 2-A thereof, is as follows: "Any corporation organized for the purpose shall have the right to construct and maintain lines of telegraph or telephone within this state and to connect same with other lines."

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE XVII, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article XVII of the Constitution, the report of Committee No. 4 being that this section shall be amended.

The Secretary read the proposed section as follows:

Section 1. All railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers, and under general law shall respectively have the right to construct and operate railroads and canals between any points within this state to connect at the state line with railroads and canals of other states and to intersect, connect with, or cross any other railroad or canal; and under general laws shall without delay or discrimination receive and transport respectively each others passengers, freight, cars and boats; and to that end shall conform in construction to standards established by a state agency authorized by law to establish the same and in the public interest to permit variations therefrom.

On the question,

Will the Committee adopt the report?

RAILROADS AND CANALS.

Mr. PEPPER. Mr. Chairman: On behalf of the committee I beg to say, sir, that the history of the matter is this: The committee originally reported out an amendment which made provision for connections *inter se* between canal companies, based upon analogous provisions for connections *inter se* between railroad companies. There was also authority given to the general assembly under the contemplated amendment to provide by general law for connections and interchanges between canal companies and railroad companies. A member of the committee, Mr. Pinchot, was desirous that the provision for interchange of facilities and service between canal companies and railroad companies should not be left merely as an authorization to the general assembly, but should be crystalized by constitutional enactment, and at his request the section was referred back to the

committee, and his amendment as here appearing was referred back to us at the same time. By inadvertence it appears here that the committee recommends the adoption of Mr. Pinchot's substitute. We have considered it and have come to the conclusion that it is not possible by constitutional enactment to crystalize any rule of interchange of tonnage and facilities as between railroads and canals, and that that is a thing which will have to be left to the more flexible processes of the legislature. Therefore, I beg that the Committee will regard the amendment now proposed as an amendment proposed by Mr. Pinchot to the report of the committee, the amendment being reported out by the committee without recommendation for such action as the Committee of the Whole may take. If the Committee of the Whole should not be of the opinion that this amendment is wise, it would be possible for the Committee to adopt the original recommendation of the committee.

Mr. CARSON. Mr. Chairman: Is the language of the original recommendation in existence anywhere so that we may have a comparison?

Mr. PEPPER. Mr. Chairman: The language of the original was in the printed report of the committee which may be turned to in the file of committee reports in the black folders. Let me say, Mr. Chairman, that the difference is very slight. The difference is this: The original recommendation of the committee contains the constitutional declaration that is already in the Constitution, that railroad companies shall interchange with one another tonnage, passengers and facilities. The original recommendation of the committee extended that declaration to cover the case of canal companies in their dealings with one another. Then when it came to the dealing between railroads and canals the original recommendation of the committee was that the legislature should be empowered to make prescriptions upon that subject. The desire of Mr. Pinchot is to crystalize into the Constitution a declaration on the subject of interchange between railroads and canals, and Judge Reed is so apprehensive about that as to intimate that a literal reading of this amendment would require railroad companies to so construct their rails that canal boats could run upon them, and that canals be so constructed that railroad cars could run through them. Whether that is an unreasonable apprehension I do not know, but it indicates the un wisdom of trying to deal with that subject by constitutional declaration.

On the question recurring,

Will the Committee adopt the report?

It was not adopted.

Mr. PEPPER. Mr. Chairman: With the Chair's permission I will move the adoption of the section as originally reported by the committee, which appears in the printed reports of the committee. Report No. 16, on page 7. We can either wait, Mr. Chairman, until it is the pleasure of the Committee of the Whole or until these have been distributed, or perhaps the Committee will take the statement of the Chairman that the situation is the one that I have stated.

Mr. FISHER. Mr. Chairman. I second the motion.

The Secretary read the proposed section as follows:

: Section 1. All railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with railroads

of other states. Any canal corporation shall have the right to construct and operate a canal between any two points within the state susceptible of connection by waterway and to connect at the state line with the canals or waterways of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad; and shall receive and transport each the others passengers, tonnage and cars loaded or empty, without delay or discrimination. Every canal corporation shall have the right with its canal to intersect, connect with or cross any other canal or to cross any railroad upon such terms and under such conditions as the general assembly may by general law determine; and shall without delay or discrimination receive and transport each the others passengers and tonnage and permit the passage of one anothers boats loaded or empty; and the general assembly may by general laws provide for the interchangeable receipt and transportation of passengers and tonnage by canals and railroads.

On the question,

Will the Committee adopt the report?

It was adopted.

MR. SCHAFFER IN THE CHAIR.

ARTICLE XVII, SECTION 5.

Mr. PEPPER. Mr. Chairman: The remaining matter to be disposed of in connection with the duties of Committee No. 4 has relation to the present section 5 in article XVII. I ask consent at this time to bring the section before the Committee of the Whole.

The CHAIRMAN. Is there any objection? The Chair hears none.

The Secretary read the section as follows:

Section 5. No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over its works; nor shall such company directly or indirectly engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length.

Mr. PEPPER. Mr. Chairman: I move that this section be adopted as it stands in the present Constitution.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress.

PROPOSED AMENDMENTS TO ARTICLE IV.

Mrs. MILLER. Mr. Chairman: Before the Commission adjourns I would like to offer two amendments, and I will ask that they be referred to the proper committee, with the request that they be reported back to the Commission for discussion, either with an affirmative or a negative recommendation.

The Secretary read the amendments as follows:

Insert between sections 20 and 21 of article IV the following new section:

The Superintendent of Charities and Corrections shall have supervisory control over all public and private charitable, benevolent and correctional institutions.

Also amend article IV, section 8, as already tentatively adopted by the Commission, by inserting in the first paragraph thereof in line 4 after the word "affairs" the words "Superintendent of Charities," and strike out at the end of the third line of said paragraph the word "and," so that the paragraph shall read:

Section 8. The Governor shall nominate and, by and with the advice and consent of a majority of all the members of the Senate, appoint a Secretary of the Commonwealth, an Attorney General, a Secretary of Internal Affairs and a Superintendent of Charities during his pleasure, a Superintendent of Public Instruction for four years, and such other officers of the commonwealth as he is or may be authorized by the Constitution or by law to appoint.

The CHAIRMAN. The amendments will be referred to Committee No. 1.

Is there anything else to come before the Commission at this time?

NEW ARTICLE, SECTION 24.

Mr. PEPPER. Mr. Chairman: Before we pass away from the subject of municipalities, there is one provision on that general subject which I should like to submit for the information of the Commission. At the present time we have the power in the general assembly to create municipal subdivisions of the state, and we have discussed and considered the matter of creating incorporated districts of various sorts under the terms of the proposal just made by Mr. English. There is one other grouping which it might be worth while to consider. It is the group made necessary in the course of administering general laws which are of such a character that they require provisions for local administration. I suppose there are two ways in which a general law may be administered, either by appointing local administrative agents, or conferring upon local agents superadded to their local duties, some administrative function on behalf of the state. The other method is to group together by legislative enactment all those persons in a class who are affected by the operation of the general law and authorize the persons so affected to take order for the administration of the law to which they are subject. This method of administering is necessary in order to effectuate the general laws on the subject of social insurance. It might be of very great value in carrying into effect the provisions of the state-wide arbitration act, and it might likewise be of great value in connection with various developments of the workmen's compensation law. So that I should like to support a section which tentatively I have drafted. I request that it be read by the Secretary.

The Secretary read the proposed section as follows:

Section 24. The general assembly may, for the purpose of administering any general law, divide the state into one or more districts, and may create in each district one or more administrative agencies composed of all persons of a defined class or classes in the district subject to the provisions of law, and impose on such agencies the duty of carrying out the law among their members. Administrative agencies shall not be construed to be municipalities or subject to the provisions of this Constitution pertaining thereto unless the general assembly so provides.

Mr. PEPPER. Mr. Chairman: I should like to have it considered by the Commission and not called for present consideration or debate, but to give opportunity for the printing of it so that it may be disposed of at some time before we pass away finally from the subject of municipalities.

The CHAIRMAN. The amendment submitted by Mr. Pepper will be printed for the use of the members, and can be called up at such time as Mr. Pepper desires.

RECESS.

Mr. FISHER. Mr. Chairman: I move that the Commission do now take a recess until 2.30 o'clock P. M.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 12.45 o'clock P. M., the Commission took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2.30 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour for the reconvening of the Commission having arrived, the Commission will be in order.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports from committees at this time?

Has Committee No. 1 anything to report?

Mr. ALTER. Mr. Chairman: Committee No. 1 had referred to it a proposed section offered by Mrs. Miller relating to the creation of the office of Superintendent of Charities. That is returned by the committee with a negative recommendation, with a memorandum stating that this is done for the reason that in the judgment of the committee the creation of such an office and the assignment of his duties is a matter more properly within the jurisdiction of the legislature than within the proper scope of the Constitution.

The CHAIRMAN. The report will be received.

For Report No. 21 see Appendix.

The CHAIRMAN. Has Committee No. 2 anything to report?

Mr. CARSON. Mr. Chairman: Committee No. 2 begs leave to submit the following report.

The CHAIRMAN. The report will be received.

For Report No. 23 see Appendix

The CHAIRMAN. Has Committee No. 3 any report to make?

Mr. THORPE. Mr. Chairman: Committee No. 3 has no report to make.

The CHAIRMAN. Has Committee No. 4 any report to make?

Mr. PEPPER. Mr. Chairman: Committee No. 4 has no report, sir.

The CHAIRMAN. Has Committee No. 5 any report to make?

Has any member of the Commission anything to suggest at this time?

Mr. ENGLISH. Mr. Chairman: May I be permitted to submit a report for the special committee on local government which has to deal with local government? The committee recommends for consideration a new section 12 of the article on municipalities.

The CHAIRMAN. The report will be received.

For Report No. 22 see Appendix.

The CHAIRMAN. Has any other member of the Commission anything to suggest at this time?

Mr. PEPPER. Mr. Chairman: Is it in order at this time to call up the suggestion of which I gave notice this morning for the reconsideration of the action of the Commission?

COMMITTEE OF THE WHOLE DISPENSED WITH.

The CHAIRMAN. Because of the miscellaneous subjects still on the Secretary's record, it would seem to the Chair that we could save time and avoid confusion by dispensing with the Committee of the Whole for the remainder of the today's session.

Mr. FISHER. Mr. Chairman: I move the Committee of the Whole be dispensed with for the remainder of today's session.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

RECONSIDERATION OF VOTE ON ARTICLE RELATING TO LAND TITLES.

Mr. PEPPER. Mr. Chairman: I move you that the commission do now reconsider the action heretofore taken in recommending for omission that portion of the present Constitution which is not contained in any article but was embodied in the Constitution by amendment, the subject-matter being authority to the general assembly to create a system of registering, transferring, insuring and guaranteeing land titles by the state.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the Commission adopt the report?

The Secretary read the section as follows:

Laws may be passed providing for a system of registering, transferring, insuring of and guaranteeing land titles by the state, or by the counties thereof, and for settling and determining adverse or other claims to and interest in lands the titles to which are so registered, transferred, insured and guaranteed; and for the creation and collection of indemnity funds; and for carrying the system and powers hereby provided for into effect by such existing courts as may be designated by the legislature, and by the establishment of such new courts as may be deemed necessary. In matters arising in and under the operation of such system, judicial powers, with right of appeal, may be conferred by the legislature upon county recorders and upon other officers by it designated. Such laws may provide for continuing the registering transferring, insuring and guaranteeing such titles after the first or original registration has been perfected by the court, and provisions may be made for raising the necessary funds for expenses and salaries of officers, which shall be paid out of the treasury of the several counties.

Mr. PEPPER. Mr. Chairman: I move that the present provision of the Constitution on the subject of registering, transferring, insuring and guaranteeing land titles be re-enacted without change.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Commission agree to the motion?

LAND TITLES.

Mr. PEPPER. Mr. Chairman: I hold in my hand the careful and learned report of the legislative commission made to the session of 1917 on the subject-matter of this portion of the Constitution. The discussion of the whole subject of registering, transferring, insuring and guaranteeing land titles in that report, and in other documents that have been furnished to me by the commission, satisfies me that it would be at least premature for us to recommend any action which would nullify the work of that commission. The commission is proceeding with the preparation of legislation to be brought to the at-

tention of the legislature for the purpose of creating a system of general applicaion throughout the commonwealth, but submission to it will be optional in any particular case. Interviews that I have had with members of the commission have satisfied me that the necessity is a much greater and more important one than I had supposed when the Committee of the Whole took action in the matter a while ago. As the subject-matter of this provision has so recently been incorporated into the Constitution by a vote of the people, the presumption is that some such system has the sanction of popular approval, and I therefore think that certainly at this stage of our deliberations we should stand by the provision as it appears in the fundamental law at present. I hope for that reason that the present section will be continued.

Mr. FISHER. Mr. Chairman: I do not want to usurp the functions of our chairman, but he was absent when this matter was under the consideration of Committee No. 1. The only thing that inspired the report was the fact that the provision had been neglected and had never been put into operation and did not seem to have much application to the system of titles in vogue in Pennsylvania. We were not aware at that time that there was a commission considering legislation. I think that there can be no objection to restoring the provision in the Constitution. It is one of those articles that, if it does not do any good, at least does not do any harm, and it would be perfectly safe to leave it where it is. As an amendment it was incorporated without a number, and I would suggest that it be made a separate article in the Constitution if adopted.

On the question recurring,

Will the Commission agree to the motion?

It was agreed to.

RECONSIDERATION OF VOTE ON SECTION 21 OF NEW ARTICLE.

Mr. ENGLISH. Mr. Chairman: It has been suggested that this morning we adopted a section known as section 21 of the article on municipalities, which relates to the extension of credit by municipalities, rather hastily, and it possibly might be better to put that section on the calendar for next week. I have been requested to move the reconsideration of this section. I do this because it is an important matter, and I am sure none of us should like to have the impression created that any section was passed hastily.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the Commission agree to the section?

SECTION 21 OF NEW ARTICLE POSTPONED.

Mr. ENGLISH. Mr. Chairman: I move that further consideration of this section be postponed for the present.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XII.

The CHAIRMAN. Has any other member of the Commission anything to bring forward at this time? If not, the Chair would like to

call the attention of the Commission to certain sections of the Constitution which have not been acted upon. Article XII, sections 1 and 2, according to the Chair's understanding, entitled "public officers," these two sections "election of state and local public officers," page 58 of the Compilation, and the section as to "incompatible officers," have not been reported upon.

Mrs. MILLER. Mr. Chairman: I thought these were reported out by our committee.

The CHAIRMAN. The Secretary has no record of them, and it has been stated to the Chair that the intention was to report them as they are in the present Constitution. If that is so, the report can be considered as made, and can be acted upon now.

ARTICLE XII, SECTION 1.

The CHAIRMAN. The Chair lays before the Commission section 1 of article XII of the Constitution.

The Secretary read the section as follows:

Section 1. All officers, whose selection is not provided for in this Constitution, shall be elected or appointed as may be directed by law; provided, that elections of state officers shall be held on a general election day, and elections of local officers shall be held on a municipal election day, except when, in either case, special elections may be required to fill unexpired terms.

Mr. PEPPER. Mr. Chairman: I move that section 1 of article XII as it stands in the Constitution at present be re-enacted without change.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XII, SECTION 2.

The CHAIRMAN. The Chair lays before the Commission section 2 of article XII of the Constitution.

The Secretary read the section as follows:

Section 2. No member of Congress from this state, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this state to which a salary, fees or perquisites shall be attached. The general assembly may by law declare what officers are incompatible.

Mr. PEPPER. Mr. Chairman: I move that section 2 of article XII as it stands in the Constitution at present be re-enacted without change.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XV, SECTION 3.

The CHAIRMAN. There is pending before Committee No. 5 section 3 of article XV, page 61 of the Compilation, providing for a city sinking fund, and the Chair now lays that section before the Commission.

The Secretary read the section as follows:

Section 5. Every city shall create a sinking fund, which shall be inviolably pledged for the payment of its funded debt.

Mr. ENGLISH. Mr. Chairman: I am quite sure that section 3 of article XV is substantially rewritten in one of the sections reported by the committee on local government which was approved this morning.

The CHAIRMAN. In order to clear up the work then, section 3 of article XV will be dropped. Is that it?

Mr. ENGLISH. Mr. Chairman: I move that section 3 of article XV be dropped from the Constitution.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Commission agree to the motion?

SINKING FUND.

Mr. PEPPER. Mr. Chairman: Before we vote I think it ought to be understood by all concerned that we are not omitting this with any thought that sinking fund provisions should be removed from the security of the municipal obligation, but merely to facilitate consideration of a measure which has not yet been passed upon.

I think Mr. English is in error in thinking that we acted finally. It will be remembered that the proposal was withdrawn upon the assurance of Mr. Connelly that at a later stage he would present to us for consideration an amendment that would cover the whole subject of sinking fund and indebtedness. I simply do not want the apprehension to gain ground that we are cutting out the sinking fund provision and putting nothing in its place. I would call the attention of the Commission to the fact that section 23, on page 5 of the calendar, covers the matter of sinking funds of municipalities.

The CHAIRMAN. That has not been acted upon.

Mr. FISHER. Mr. Chairman: It was reported by the committee and referred back for action, and it was intended to be a substitute for this provision?

Mr. PEPPER. Mr. Chairman: Yes, sir.

Mr. ENGLISH. Mr. Chairman: My recollection is that section 23 was adopted. Section 22 was referred back to the committee.

Mr. ALTER. Mr. Chairman: Section 23 was adopted.

Mr. ENGLISH. Mr. Chairman: It is in section 23 that this provision is substantially re-enacted.

Mr. FISHER. Mr. Chairman: Section 23 was adopted as amended, by striking out the word "income" before the word "tax."

The CHAIRMAN. And as adopted it does provide for a sinking fund.

Mr. FISHER. Mr. Chairman: It does provide for a sinking fund; yes.

On the question recurring,

Will the Commission agree to the motion?

It was agreed to.

ARTICLE XVIII, SECTION 1.

The CHAIRMAN. Article XVIII, section 1, on page 66 of the Compilation, providing for future amendments, has not been reported, according to the records of the Secretary.

FUTURE AMENDMENTS.

Mr. ENGLISH. Mr. Chairman: I think the Secretary's record is correct as to this provision. My understanding is that according to the original assignment this section was referred to Committee No. 5. I do not remember that the committee has given the matter any consideration, and therefore I hardly feel at liberty to report on behalf of the committee. Personally, I feel that when the committee does consider this section it will probably decide to suggest to the Commission that it be allowed to remain in its present form. It deals with the manner of amending the Constitution. It is a procedure that has been used frequently since the original Constitution was adopted, and there has never come to my attention at least any complaint as to the adequacy of it.

The CHAIRMAN. Would there be any objection to having it considered as being reported out so that it may be put on the calendar for consideration next week?

Mr. ENGLISH. Mr. Chairman: With the consent of Mrs. Warburton, who is the only other member of the committee present, I will undertake on behalf of Committee No. 5 to report on section 1 of article XVIII that it be allowed to remain as in the present Constitution. I, therefore, present the following report.

The CHAIRMAN. The report will be received.

For Report No. 24 see Appendix.

Mr. PEPPER. Mr. Chairman: May I ask the chairman of the Committee through you, sir, whether there is not some reason to consider some change in this provision in view of the situation in which we now find ourselves in discussing the possible adoption of the new Constitution?

The CHAIRMAN. I think if we have it on the calendar then the members of the Commission will give some thought to it while away this week, and something can be formulated. I have no doubt that it will meet with the approval of the Commission when it convenes next week.

Mr. ENGLISH. Mr. Chairman: My understanding in undertaking to report it is that it will go on the calendar for consideration by the Commission without recommendation.

ARTICLE VIII, SECTION 7.

The CHAIRMAN. The Secretary also calls attention to the fact that section 7 of article VIII has not been reported. This section appears on page 48 of the Compilation. The Chair lays this section before the Commission.

The Secretary read the section as follows:

Section 7. All laws regulating the holding of elections by the citizens or for the registration of electors shall be uniform throughout the state, but laws regulating and requiring the registration of electors may be enacted to apply to cities only; provided, that such laws be uniform for cities of the same class.

Mrs. MILLER. Mr. Chairman: It was my thought that it was referred by our committee to the committee on municipal government.

The CHAIRMAN. The records show that it was referred to Committee No. 3, and from Committee No. 3 to Committee No. 5. Is there any objection to this section being placed upon the calendar for consideration next week?

Mr. FISHER. Mr. Chairman: I move that section 7 of article VIII be placed upon the calendar for next week.

Mrs. MILLER. Mr. Chairman: I second the motion.

On the question,

Will the Commission agree to the motion?

Mr. PEPPER. Mr. Chairman: Is it not a section that might be disposed of now?

The CHAIRMAN. It seems to the Chair that it may be.

Mr. PEPPER. Mr. Chairman: To test the sense of the Commission, I move that section 7 of article VIII be re-enacted without change.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VIII, SECTION 11.

The CHAIRMAN. It also appears from the report of the Secretary that section 11 of article VIII has not been reported. This section refers to election districts and appears on page 49 of the Compilation. The Chair lays this section before the Commission.

The Secretary read the section as follows:

Section 11. Townships, and wards of cities or boroughs, shall form or be divided into election districts of compact and contiguous territory, in such manner as the court of quarter sessions of the city or county in which the same are located may direct; but districts in cities of over one hundred thousand inhabitants shall be divided by the courts of quarter sessions, having jurisdiction therein, whenever at the next preceding election more than two hundred and fifty votes shall have been polled therein; and other election districts whenever the court of the proper county shall be of opinion that the convenience of the electors and the public interests will be promoted thereby.

ELECTION DISTRICTS.

Mr. FISHER. Mr. Chairman: The only question I have in mind is whether it would apply in case there are special districts incorporated covering more than one municipality.

The CHAIRMAN. From what?

Mr. FISHER. Mr. Chairman: Covering more than one municipality, these metropolitan districts we are hearing about. It might be necessary to provide elections for such districts. Would this provision meet the situation?

The CHAIRMAN. Was this to provide for election districts?

Mr. FISHER. Mr. Chairman: Yes, sir.

The CHAIRMAN. It would seem that election districts, even in the metropolitan districts, would be the same. You could not have election districts could you? This provides for the precinct organization, townships, wards, cities and boroughs shall be divided into election districts, and so on.

Mr. FISHER. Mr. Chairman: That is true; but these metropolitan districts might have special elections or special regulations and would need special machinery. It only flashes in my mind. I take into consideration whether a situation might arise that would not be in harmony with the present provisions of the Constitution. I do not know that it is so.

Mr. PEPPER. Mr. Chairman: I suggest that this section deals only with election districts in townships and cities. I see no inconsistency between the provisions of this section and any law that might

be passed by the legislature with reference to the organization of special incorporated districts and the holding of elections therein. The legislature, under its power to create and regulate, might provide, if necessary, for a different precinct system for such districts without running counter to those which deal specifically with the election districts of boroughs, townships and cities. It seems to me that we might safely re-enact it.

Mr. ENGLISH. Mr. Chairman: May I also suggest that the purpose of this section is to make it certain that election districts will be compact and contiguous. It seems to me that is the sense of the section, and therefore that there would be no harm in re-enacting it. There would be no possible clash between it and whatever election districts might be incidental to metropolitan districts.

Mr. PEPPER. Mr. Chairman: I move that section 11 of article VIII be re-enacted without change.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VIII, SECTION 15.

The CHAIRMAN. The Secretary reports that section 15 of article VIII, on page 50 of the Compilation, covering the disqualifications for election officers, has not been reported. The Chair lays this section before the Commission.

The Secretary read the section as follows:

Section 15. No person shall be qualified to serve as an election officer who shall hold, or shall within two months have held, any office, appointment or employment in or under the government of the United States, or of this state, or of any city, or county, or of any municipal board, commission or trust in any city, save only justices of the peace and aldermen, notaries public and persons in the militia service of the state; nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve, save only to such subordinate municipal or local offices, below the grade of city or county offices, as shall be designated by general law.

Mr. FISHER. Mr. Chairman: This provision seems never to have been called into question. It regulates the qualifications for election officers, and I therefore move that it be adopted in the form in which it appears in the present Constitution.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IX, SECTION 9.

The CHAIRMAN. There is pending before the special committee on local government section 9 of article IX, which has not been acted upon, although it possibly has been reported. As the Chair understands, this section provides that the "commonwealth shall not assume the debt, or any part thereof, of any city, county, borough or township, unless such debt shall have been enacted to enable the state to repel invasion, suppress domestic insurrection, defend itself in time of war, or to assist the state in the discharge of any portion of its present indebtedness."

The Secretary read the section as follows:

Section 9. The commonwealth shall not assume the debt, or any part thereof, of any city, county, borough or township, unless such debt shall have been enacted to enable the state to repel invasion, suppress domestic insurrection, defend itself in time of war, or to assist the state in the discharge of any portion of its present indebtedness.

Mr. ENGLISH. Mr. Chairman: With the consent of Mr. Pepper, I report this section, and the committee recommends that it be retained in the Constitution in its present form, and I therefore move its adoption.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. With these sections out of the way, I think everything that is for consideration will be on the calendar and will be arranged for next week.

JUDICIARY ARTICLE.

Mr. PEPPER. Mr. Chairman: May I call attention to a matter that has been mentioned informally several times and which seems to me to deserve more consideration than we have yet been able to give to it? I refer to the suggestion that the judiciary article in the state Constitution should be conformed to the corresponding article in the Constitution of the United States providing for one supreme court and such other courts as the general assembly may from time to time create. If such provision were enacted it would be necessary to safeguard the tenure and salaries of judicial officers whose interests would be affected by the change. There has been placed in my hands a careful memorandum of all the provisions in the Constitution which would be affected in case such a change as I have referred to were decided to be wise. The memorandum is so valuable and the subject so important that I am going to ask leave to introduce it for the information and consideration of the Commission, and ask that it be read by the Secretary, and also that it be printed and distributed by the Secretary in advance of the next meeting so that if the Commission please it may be placed upon the calendar and considered then.

The CHAIRMAN. If Mr. Pepper will pass it up the Chair will make an order that it shall be printed. I think it might be well to have this printed on the calendar as a sort of separate tentative calendar to be acted upon in case the necessity for action shall arise. The Secretary will so govern himself.

The Secretary read the memorandum as follows:

SUGGESTED AMENDMENTS TO ARTICLE V TO ELIMINATE FROM THE CONSTITUTION ALL COURTS EXCEPT THE SUPREME COURT AND TO PROTECT THE JUDICIARY.

Introduced by Mr. Pepper, February 4, 1920, and ordered printed and placed on the calendar.

Section 1. Strike out all after the word "court" on line 2 to the end of line 4, so that the section will read:

The judicial power of this commonwealth shall be vested in a supreme court and in such other courts as the general assembly may from time to time establish.

Section 4 (as tentatively adopted). Strike out this section and substitute a new section, reading as follows:

Until otherwise directed by law, all courts, judicial districts and the qualifications, powers and duties of all judges, magistrates and court officers shall continue as at present established.

Section 5 (as tentatively adopted). Omit.

Section 6 (as tentatively adopted). Omit.

Section 7 (as tentatively adopted). Omit.

Section 8, 9, 10, 11, 12 and 13 (as in present Constitution). Omit.

Section 15. Amend to read as follows:

All judges of courts of record, except the judges of the supreme court, shall be elected in such manner as may be provided by law and shall hold their offices for the period of ten years, if they so long behave themselves well; but for any

reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each House of the general assembly.

Section 16. Omit.

Note. This omission takes out the principle of minority representation.

Section 17. Omit the words "or any two or more judges of the court of common pleas for the same district."

Section 18. Omit the words "and the judges of the several courts of common pleas."

Section 20. Omit.

Section 21. Amend so as to read:

No duty shall be imposed by law upon any court or judge except such as are judicial, nor shall any judge exercise any power of appointment except the appointment of officers of the court.

(It will be noted that this prohibition is not confined to courts of record. It will also be noted that the last sentence of the present section 21 has been omitted, and that this results in eliminating any express reference to the fact that judges of the supreme court shall not be required to preside over other courts. This is covered, however, by the suggested wording of the new section, 21-A, protecting the judiciary and the judicial office.)

Section 21-A. Insert after section 21 a new section as follows:

The change or abolition of the organization or jurisdiction of any court shall not operate to reduce the salary of any judge during the term for which he shall have been elected or appointed, or to require any judge elected or appointed primarily to perform appellate duties to serve without his consent in a court of inferior jurisdiction, or to impose upon any judge duties which shall require him to discharge duties outside of the judicial district for which he shall have been elected or appointed.

Section 22. Omit.

Section 26. Amend so as to read:

All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction and powers of all courts of the same class or grade so far as regulated by law, and the force and effect of the process and judgments of such courts, shall be uniform.

The CHAIRMAN. Is there anything else to come before the Commission at this time?

ADJOURNMENT.

Mr. FISHER. Mr. Chairman: I move the Commission do now adjourn until 10 o'clock Tuesday morning, February 10, 1920.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 3.35 o'clock P. M., the Commission adjourned until 10 o'clock Tuesday morning, February 10, 1920.

Senate Chamber,
Tuesday, February 10, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—19.

Alter, Carson, Cuyler, English, Fisher, Fox, Gordon, Kelly, Miller, Munce, Pepper, Perrine, Reed, Stackpole, Thorpe, Tyson, Voll, Warburton, Schaffer (Chairman).

ABSENT—5.

Connelly McCormick, Pinchot, Smith, Sulzberger.

The CHAIRMAN. A quorum of the Commission being present, the Commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mr. TYSON. Mr. Chairman: I second the motion.

The motion was agreed to.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports from committees at this time?

Has Committee No. 1 anything to report?

Mr. ALTER. Mr. Chairman: Nothing to report.

The CHAIRMAN. Has Committee No. 2 anything to report?

Mr. CARSON. Mr. Chairman: Committee No. 2 reports that it has conferred with Dr. Thorpe's committee, I think it is No. 3, and Dr. Thorpe will report the result of the conference.

The CHAIRMAN. Has Committee No. 3 anything to report?

Mr. THORPE. Mr. Chairman: Article VIII, section 3, page 47 of the Compilation, with certain other matters, was referred to the judiciary committee, and it is the opinion of that committee, and I respectfully submit that the article stand as it is printed in the Compilation without change.

The CHAIRMAN. The report of the committee will be received and the section will be placed upon the calendar for consideration at a meeting this week.

Has Committee No. 4 anything to report?

Mr. REED. Mr. Chairman: The Chairman is not here, and I do not know.

The CHAIRMAN. Has Committee No. 5 anything to report?

The Secretary calls the attention of the Chair to the fact that no report has been made on section 16 of article VIII. The section refers to overseers of elections. The record shows that that was referred by Committee No. 3 to Committee No. 2.

Mr. CARSON. Mr. Chairman: If that be so Committee No. 2 will go into conference with Committee No. 3 on the subject, if you will permit us to withdraw.

The CHAIRMAN. Leave is granted so that we can clean up the entire calendar. That is the only undisposed of section of the Constitution on which no report has been made.

RECESS.

Mr. FISHER. Mr. Chairman: I move that the Commission do now take a recess for fifteen minutes.

Mrs. MILLER. Mr. Chairman: I second the motion.

The motion was agreed to.

AFTER RECESS.

The CHAIRMAN. The time of recess having expired, the Commission will be in order.

The CHAIRMAN. Has any other committee anything to report at this time?

Mr. THORPE. Mr. Chairman: The report of Committee No. 3 in consultation with the committee on judiciary is to the effect that article VIII on page 46 of the Compilation, section 1, clause 3, should be modified by the insertion of the words "sixty days" for the words "two months."

Article VIII, section 16, which was the subject of conference, shall remain unchanged.

The CHAIRMAN. The report of the committee will be received and will go on the supplemental calendar.

The Chair understands now from the Secretary that with the report on these two sections, every section of the Constitution has been regularly reported to the Commission.

ARTICLE IX, SECTION 1, RESTORED TO CALENDAR.

Mr. REED. Mr. Chairman: I beg to differ with that. I intended to call your attention at this time to section 1 of article IX which is found on page 35 of the last tentative draft of the Constitution, that that section has not been considered by the Committee of the Whole.

The CHAIRMAN. Page 35?

Mr. REED. Yes, sir.

The CHAIRMAN. It would seem to the Chair that that section should come out of the tentative draft because it has not been considered by the Committee of the Whole. The Committee of the Whole, as the Chair recalls it, and Judge Reed will say whether his recollection agrees with mine, was that the consideration of that section was to be entirely passed by the Committee of the Whole until after it was acted upon at the next general election, that is until after this constitutional amendment has been passed upon.

Mr. REED. Mr. Chairman: There was a misunderstanding about that I think. The suggestion was made that that portion of the proposed section which said that the general assembly might classify the subjects of taxation for the purpose of laying a graded or progressive tax was to lie over until after the election, but that did not in my mind at least prevent the Committee from considering the remainder of the section. After some little talk Senator Fisher moved that the whole matter be postponed. I would move that that section be restored to the calendar and that we consider it this week, that is, the report of the committee.

The CHAIRMAN. As it appears on page 35?

Mr. REED. As it appears on page 35.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question.

Will the Committee agree to the motion?

Mr. REED. Mr. Chairman: That is my idea. My reason is that if we are going to have hearings on this draft we ought to have something in some sort of shipshape before that time.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

The CHAIRMAN. Has any other member of the Commission anything to bring before us at this time?

PUBLIC HEARINGS.

Mr. FISHER. Mr. Chairman: I offer the following resolution and move its adoption.

The CHAIRMAN. The resolution will be received.

The Secretary read the resolution as follows:

Resolved, first, That when the Commission adjourns this week, the adjournment will be until Tuesday, April 6, at 11.30 A. M. in the Senate Chamber, in the Capitol, Harrisburg.

Second, That Tuesday and Wednesday, April 6 and 7, and on each Tuesday and Wednesday, thereafter so long as necessary, the Commission will give public hearing to all those desiring to be heard in regard to any matter pertaining to the amendment or revision of the Constitution of this commonwealth, and those desiring to appear before the Commission will communicate with William Draper Lewis, Esq., the Secretary of the Commission, at the Capitol, Harrisburg, who is directed to make all the necessary arrangements for the public hearings.

Mr. THORPE. Mr. Chairman: I second the motion.

The motion was agreed to.

DISTRIBUTION OF PRELIMINARY DRAFT.

Mr. FISHER. Mr. Chairman: I offer the following resolution and move its adoption.

The CHAIRMAN. The resolution will be received.

The Secretary read the resolution as follows:

Resolved, That the Secretary is hereby directed to cause to be distributed the preliminary draft of suggested revisions and amendments to the Constitution; the publication to be made in such manner as to indicate the changes proposed in the present Constitution.

Mrs. MILLER. I second the motion.

The motion was agreed to.

SUGGESTED AMENDMENTS.

Mr. FISHER. Mr. Chairman: I offer the following resolution and move its adoption.

The CHAIRMAN. The resolution will be received.

The Secretary read the resolution as follows:

Resolved, That all amendments submitted in writing by those addressing the Commission at the public hearings shall be referred to the appropriate committee. The committees shall make an affirmative or negative report on all such suggested amendments.

Mr. STACKPOLE. Mr. Chairman: I second the motion.

The motion was agreed to.

REVISIONS AND AMENDMENTS TENTATIVELY ADOPTED.

Mr. FISHER. Mr. Chairman: I offer the following resolution and move its adoption.

The CHAIRMAN. The resolution will be received.

The Secretary read the resolution as follows:

Resolved, That the Secretary is hereby directed to prepare and, subject to the approval of the Chairman, publish and distribute a statement setting forth the revisions and amendments tentatively adopted by this Commission and expressing the desire of the Commission for suggestion and criticism.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer Chairman.

RECONSIDERATION OF VOTE ON ARTICLE XIV, SECTION 7.

Mr. MUNCE. Mr. Chairman: In the report of our committee in regard to the election of officers, county commissioners and county auditors, after considerable discussion and some amendments, we finally adopted the original article as it stood. Now, after considering this matter personally, and after consulting a number of persons in regard to it, I feel that a matter of as great importance as this was passed over entirely too lightly. In other words, I think the report from the committee, as we brought it out, has enough of merit in it for us to give it more consideration than we have done. It is for that reason that I call it up again for consideration. It was taken up the other day, when everybody was watching the clock and trying to get away. I do not think a great many of us realize exactly what we were doing. After giving this matter considerable study I feel that the interests of the state at large ought to be, will be, very much better taken care of if we will adopt the recommendation of the committee as it was originally reported out rather than the amended one and particularly to go back and leave the article as it is in article XIV, section 7. Our report was that "Three county commissioners and three county auditors as shall be elected in each county where such officers are chosen in the year one thousand nine hundred and twenty-three, one for two years, one for four years, and one for six years, and every two years thereafter one for

six years; and in the election of said officers each qualified elector shall vote for one person, and the person having the highest number of votes shall be elected for the term of six years; any vacancy in the office of county commissioner or county auditor shall be filled by the court of common pleas of the county in which such vacancy shall occur, by the appointment of any elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled." I would suggest a change in the article as it was reported, that instead of saying "who shall have voted for the commissioner or auditor whose place is to be filled" that it be amended to read, "of the same political party as he whose place is to be filled." I would suggest that change be made. Now, the reason I suggest that we give this more consideration is that since the office of county commissioner is so very important in the state, and since the highway department, and the road interests and the interests of the public, interests of the county, particularly outside of the large cities, are so vitally at stake and they are becoming so great, and the county commissioners are compelled to act in conjunction with the State Highway Department, with the townships and boroughs in the matter of road construction, bridge construction, it seems to me that it is a very bad policy to have the condition exist as it does, making it possible to put out the three commissioners at one time and to put in three new commissioners. In other words, I do not know of any business that would do business along that line. Take a bank, for instance, or any other business, it would be certainly very fatal to any industry of any kind to clean out all the officers or those in authority and put in some who did not have any experience or knowledge of what has been done. For that reason I think it would be very important and a good thing for us to adopt this report. For that reason I am advocating that we reconsider the amendment. I therefore move that we reconsider the vote by which this section was adopted.

Mr. ALTER. Mr. Chairman: I second the motion to reconsider the action last week by which this section was restored to the form in which it is in the present Constitution.

The motion was agreed to.

The CHAIRMAN. The section will be placed on the supplemental calendar which is being made up.

Sections 21 and 22 of the proposed new article of the Constitution will be passed over in their order because of a request that has come from Mr. Connelly that these municipal sections, the sections relating to municipalities, may be passed until he arrives. He is on his way.

Is there any objection?

The Chair hears none and the sections will go over in their order.

The Chair rules as a matter of parliamentary practice that the negative report on section 20-A by Committee No. 1 does not place the section before the Committee for action, and that section and the next section, section 8, article IV, can only come before the Committee of the Whole by some motion. They therefore will not be considered at this time by the Committee of the Whole.

Sections 12 and 19-A of the new article will be passed in their order until the arrival of Mr. Connelly.

ARTICLE V, SECTION 6.

The CHAIRMAN. The next section in order for consideration is section 6 of article V of the Constitution, the report of Committee No. 2 being that the first paragraph of present section 6 be stricken out and the following substituted therefor.

The proposed section was read by the Secretary as follows:

In the county of Philadelphia all the jurisdiction and powers now vested in the several numbered courts of common pleas shall be vested in one court of common pleas, composed of all the judges in commission in said courts. Such jurisdiction and powers shall extend to all proceedings at law and in equity which shall have been instituted in the several numbered courts, and shall be subject to such changes as may be made by law, and subject to change of venue as provided by law. The president judge of said court shall be selected as provided by law. The number of judges in said court may be by law increased from time to time.

On the question,

Will the Committee adopt the report?

Mr. ALTER. Mr. Chairman: I would like to inquire of the chairman of the committee whether in the last sentence which provides that "The number of judges in said court may be by law increased from time to time," whether it would not be appropriate to have that section read "The number of judges in said court may be increased or decreased from time to time."

Mr. CARSON. Mr. Chairman: I do not know if there would be any objection to that. It has occurred in the case of the Supreme Court of the United States, the number of judges has been decreased and then again increased instead of reading the number of which the court is to consist in the Constitution itself. You mean you want—

Mr. ALTER. The business may be increased or diminished.

Mr. CARSON. As my colleagues see no objection to Mr. Alter's amendment, we will accept the amendment.

The CHAIRMAN. The amendment will be accepted and will be considered as part of the report of the committee.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE V, SECTION 6 (Ibid.)

The CHAIRMAN. The next subject in order for consideration is the substitute for the second and third paragraphs of section 6 of article V of the Constitution, the report of Committee No. 2 being that the second and third paragraphs of the present section be stricken out and the following substituted therefor.

The Secretary then read the substitute as follows:

In the county of Allegheny there shall also be but one court of common pleas composed of all the judges in commission in said courts with jurisdiction, organization and power as now established, subject to such changes as may be provided by law, and subject to change of venue as provided by law. The number of judges in said court may be by law increased from time to time.

On the question,

Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: I move that we introduce the same words that we have just introduced in the preceding section, or a modification of that, if that is agreeable to the gentleman from Allegheny. He knows the situation there.

Mr. ALTER. Mr. Chairman: I think that thought is of uniform application.

The CHAIRMAN. The report of the committee will be considered as amended in the respect in which Mr. Carson has indicated, by adding the words "or decreased."

Mr. REED. Mr. Chairman: I would like to ask the chairman to also include the same words that he used in the first section, "The president judge of said court shall be selected as provided by law."

The CHAIRMAN. Is there any objection?

Mr. CARSON. None at all, sir. The gentleman from Allegheny is familiar with the situation there. In fact we have adapted our existing institution in Philadelphia to the Allegheny county system. We accept that.

The CHAIRMAN. The report will be considered as containing the suggestions made by Judge Reed and the suggestion made by Mr. Carson.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE V, SECTION 6 (Ibid.)

The CHAIRMAN. The next subject in order for consideration is the substitution of section 8 of article V as the concluding paragraph of section 6 of article V of the Constitution.

The Secretary read the substitute as follows:

The said courts in the counties of Philadelphia and Allegheny, respectively, shall from time to time in turn detail one or more of their judges to hold the courts of oyer and terminer and the courts of quarter sessions of the peace of said counties, in such manner as may be directed by law.

On the question,

Will the Committee adopt the report?

The CHAIRMAN. The Chair inquires where the words "and general jail delivery" ought to be in the section. The courts as I recall it are the courts of common pleas, quarter sessions and general jail delivery. I think those words "general jail delivery" have some significance.

Mr. CARSON. Very good, sir; we have no objection to the insertion of those words. I do not know whether they are in the present Constitution or not.

Mr. THORPE. Mr. Chairman: No they are not.

The CHAIRMAN. Then the reason for them has ceased.

Mr. CARSON. Mr. Chairman: Will this section be considered as amended by the inclusion of the words "general jail delivery?"

The CHAIRMAN. No, those words are not in the present Constitution, and therefore will not be in this section.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 7.

The CHAIRMAN. The next section in order for consideration in section 7 of article V of the Constitution, the report of Committee No. 2 being that the present section shall be stricken out and the following substituted therefor.

The Secretary read the substitute as follows:

For Philadelphia county there shall be one prothonotary's office, the prothonotary to be appointed by the judges of said court and to hold his office for three years, subject to removal by a majority of said judges; the said prothonotary shall appoint such assistants as may be necessary and authorized by said court; and he and his assistants shall receive fixed salaries to be determined by law and paid by said county; all fees collected in said office except such as may be due to the commonwealth shall be paid by the prothonotary into the county treasury.

On the question,

Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: The adaptation of this section by striking out old section 7 was simply to adapt the language to our previous modification of the system. At the present time we have five distinct courts of common pleas in Philadelphia county. Under the amendment which has been adopted, we have but one. Therefore, we had to strike out the words that the same man should be prothonotary of all the courts, and we had also to strike out the provision in regard to keeping of separate dockets and judgments for the five different courts, and simply make the section correspond with what has previously been adopted.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

RECONSIDERATION OF VOTE ON SECTION 6 OF ARTICLE V.

Mr. REED. Mr. Chairman: I am still worried about this president judge, and I would ask the Chairman to look at section 4 on page 26 of the tentative draft, in which we have provided that the president judge shall be the judge oldest in commission. Now in the section just adopted we provide that the president judge of Philadelphia and Allegheny counties shall be selected as provided by law. Ought not that to go out, go out of both the sections applicable to Philadelphia and Allegheny counties? We have already provided—

The CHAIRMAN. What section, or what page?

Mr. REED. Mr. Chairman: You will find section 6, article V, which you have just adopted, provides for that as to Philadelphia and Allegheny counties the president judge of said court shall be selected as provided by law. That would naturally mean by a law passed by the general assembly, I suppose.

Mr. CARSON. Mr. Chairman: Yes, sir.

Mr. REED. Mr. Chairman: Now if you will look at section 4 of article V, you will find that "the court of common pleas in each judicial district shall consist of such judge or judges learned in the law," and so forth; "the judge oldest in commission shall be the president judge, and any president judge re-elected in said district shall continue to be the president judge thereof." It seems that what we have provided in this section relative to Allegheny and Philadelphia counties is inconsistent.

Mr. CARSON. Mr. Chairman: The gentleman from Allegheny is entirely right. There is a conflict there. Mr. Justice Fox, you will recall that our report as to section 4, page 26 of the tentative draft, was prepared before we had reached the section now under consideration. Have you any objection as a member of the committee to strike out the words "the judge oldest in commission shall be the president judge" and let it stand on our amendment as presented?

Mr. KELLY. Mr. Chairman: Would it not be better to strike out the words "president judge of the said court shall be selected as provided by law," let them be selected as provided in the Constitution?

Mr. CARSON. Mr. Chairman: Very good; then what is your motion, Judge Reed?

Mr. REED. Mr. Chairman: I move to reconsider the vote by which section 6 of article V was adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the Committee adopt the report?

Mr. REED. Mr. Chairman: I do not know how you would enumerate that first paragraph of section 6, article V, and second paragraph, section 6, article V, be amended, by striking out the words "president judge of said courts shall be selected as provided by law."

Mr. CARSON. Mr. Chairman: On behalf of the committee, we will accept that amendment.

The CHAIRMAN. The suggestion of Judge Reed is "the president judge of said court shall be selected as provided by law," in each of these paragraphs be stricken out.

Mr. CARSON. Mr. Chairman: And let it stand in section 4 as adopted?

Mr. FOX. Mr. Chairman: I would suggest perhaps it would be better to take the exact language of the Constitution of section 4 in place of the clause we are striking out, and insert "The judge oldest in commission shall be the president judge."

The CHAIRMAN. That would make it definite, it would seem.

Mr. CARSON. Mr. Chairman: You mean carry it forward?

Mr. FOX. Mr. Chairman: Yes, sir; carry it into this section. I move to amend that the words, "the judge oldest in commission shall be the president judge," shall be carried forward.

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. REED. Mr. Chairman: That does not seem to be necessary.

The CHAIRMAN. Put in "the judge oldest in commission shall be the president judge" in this article.

Mr. REED. Mr. Chairman: Why is that necessary? Section 4 is a general provision applicable to all courts of common pleas. Unless the gentleman has some special reason for it, it seems to me it is unnecessary.

Mr. ALTER. Mr. Chairman: It seems to me it might possibly be wise to do as Judge Fox suggested, for the reason that it has been held that under the Constitution of 1873, inasmuch as it refers to the county of Philadelphia and the county of Allegheny, each by name, in connection with their common pleas courts, these two counties are put in classes by themselves separate from the rest of the state. It might be a matter of wise practice to follow Judge Fox's suggestion.

Mr. CARSON. Mr. Chairman: I think it would be wise because it settles in a definite way, if this be adopted, any possible objection that might come, or conflict among the judges themselves, as to

priority. We have five president judges that we are going to disturb, unless my friend, Judge Reed, sees some objection.

Mr. REED. Mr. Chairman: I do not object.

Mr. CARSON. Mr. Chairman: Very well.

The CHAIRMAN. Then the amendment is that the words "the judge oldest in commission shall be president judge" shall be inserted in lieu of the words "the president judge of said court shall be selected as provided by law."

Mr. FOX. Mr. Chairman: I think the latter clause should go in, "any president judge re-elected to said court shall continue to be the president judge thereof."

The CHAIRMAN. Then the amendment will be considered as suggested by Judge Fox. The amendment, in order that the records may be correct, shall be in lieu of the words, "The president judge of said court shall be selected as provided by law," the words "The judge oldest in commission shall be the president judge, but any president judge re-elected shall continue to be the president judge thereof."

On the question,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE V, SECTIONS 8, 9 AND 10.

The CHAIRMAN. The next sections to come before the Committee are sections 8, 9 and 10 of article V of the Constitution, the report of Committee No. 2 being that these sections be stricken out of the existing Constitution, the substance of section 8 having been incorporated in section 6 as heretofore reported, and the substance of sections 9 and 10 having been incorporated in section 5 as heretofore reported.

The Secretary read the sections as follows:

Section 8. The said courts in the counties of Philadelphia and Allegheny, respectively, shall, from time to time, in turn detail one or more of their judges to hold the courts of oyer and terminer and the courts of quarter sessions of the peace of said counties, in such manner as may be directed by law.

Section 9. Judges of the courts of common pleas learned in the law shall be judges of the courts of oyer and terminer, quarter sessions of the peace and general jail delivery, and of the orphans' court, and within their respective districts shall be justices of the peace as to criminal matters.

Section 10. The judges of the courts of common pleas, within their respective counties, shall have power to issue writs of certiorari to justices of the peace and other inferior courts not of record, and to cause their proceedings to be brought before them, and right and justice to be done.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 11.

The CHAIRMAN. The next section in order for consideration is section 11 of article V of the Constitution, the report of Committee No. 2 being that the present section 11 be stricken out and the following substituted.

The Secretary read the proposed section as follows:

Section 11. Except as otherwise provided in this Constitution, justices of the peace shall be elected in the several townships and may be elected in the several boroughs and cities, by the qualified electors thereof, at the municipal election, in such manner as shall be directed by law, and shall be commissioned by the Governor for a term of six years. No township shall elect more than one justice of the peace, and no person shall be elected to such office unless he shall have resided within the township for two years next preceding his election. Not more than one justice of the peace shall be elected in each borough unless such borough contains more than five thousand inhabitants, and not more than one justice of the peace shall be elected in boroughs for each additional five thousand inhabitants contained therein. In case a borough shall be entitled to elect more than one justice of the peace, it shall be divided into districts containing not less than five thousand inhabitants, and justices of the peace shall be elected by the qualified electors of each district. No person shall be elected to such office in boroughs unless he shall have resided within the borough or district for at least three years preceding his election. In cities, exclusive of cities of the first class, containing over five hundred thousand inhabitants not more than one justice of the peace shall be elected for each one hundred thousand inhabitants, and such cities shall be divided into districts each containing not less than one hundred thousand inhabitants, and the justices of the peace shall be elected by the qualified electors of each district. In cities containing less than five hundred thousand inhabitants not more than one justice of the peace shall be elected for each fifty thousand inhabitants, and such cities shall be divided into districts each containing not less than fifty thousand inhabitants, and the justices of the peace shall be elected by the qualified electors of each district; provided, that every city may have at least one justice of the peace. No person shall be elected to such office in cities unless he shall have resided within said city or district for at least five years next preceding his election. All justices of the peace and aldermen in office when this Constitution shall be adopted shall serve their unexpired terms.

On the question,

Will the Committee adopt the report?

JUSTICES OF THE PEACE.

Mr. KELLY. Mr. Chairman: The chairman of our committee suggested that I make a little explanation of this section. There has been a great deal of complaint from the public of the conduct of certain justices of the peace. There is considerable sentiment against justices of the peace, I think, generally speaking, caused, of course, by the conduct of some justices of the peace. I have received communications from a number of people suggesting that they be entirely abolished. The thought of the committee was that they should not be entirely abolished, but that some changes should be made. One of the evils that we labor under is that we have too many justices of the peace. One of the results of having too many is that the decent, respectable, sensible and honest justices of the peace get nothing to do, and the one who gets business and gets emoluments from his office is the one who stirs up quarrels and litigation, which are unnecessary. The office, of course, is a very old one, and there was a disinclination to entirely abolish it. So the Commission will observe that we have said at the beginning here that justices of the peace shall be elected in the several townships and may be elected in the several boroughs and cities. In other words, we retain as a constitutional officer in the township a justice of the peace, only leaving it to the legislature to say whether they shall be continued in the boroughs and cities. There are now at least two justices of the peace in every township of the state, and at least two in every borough, and in many instances there are more because, under the present Constitution, by a vote of the township or borough, the number may be increased. That has been done in a great many instances. We provide here that there shall be only one in every township, thus reducing by more than one-half the number of justices of the peace in the townships. In boroughs we say that there shall not be more than one unless the borough contains

more than five thousand inhabitants, and only one for each five thousand inhabitants. I think the present Constitution provides that no person shall be elected justice of the peace unless he shall have resided one year in the ward, until he shall have lived two years next preceding his election in the township, three years in the borough, and five years in the city; the thought being that it would increase the likelihood of obtaining better men to aspire to and hold this office. We have had the experience of having men move into certain districts with a view of obtaining this office of justice of the peace; certain officers who have seen the possibilities of the office have moved into the district for the purpose of anticipating an election to such an office. By extending the time required for residence in the respective districts, two years in townships, three years in boroughs, and five years in cities, we thought that we would help the situation, and that it would prevent the moving into districts with a view of obtaining this office. It would be rather discouraging to have to live in the district so long.

Under the judiciary article, section 1, article V, it is provided that the judicial power of the commonwealth shall be vested in a supreme court and superior court, courts of common pleas, courts of oyer and terminer and general jail delivery, and courts of quarter sessions, orphans' courts, and any such other courts as the general assembly may from time to time establish. By using the language "may" instead of "shall," with respect to boroughs and cities, the legislature is enabled to substitute some other form of inferior court for the office of justice of the peace. We have left out entirely the word "alderman," except in the last clause, which provides that all justices of the peace and aldermen in office when this Constitution shall be adopted shall serve their unexpired term. Of course, there is nothing here that will prevent the legislature from calling them aldermen or creating aldermen in the cities if they see fit.

Mr. REED. Mr. Chairman: I would like to ask the gentleman while he is on his feet, why do you distinguish between cities of the first and second class, and restrict us, the city of Pittsburgh, to one justice of the peace to one hundred thousand people? Is not that too large a district for one man?

Mr. KELLY. Mr. Chairman: Well, I can only say that the members of our committee from Philadelphia suggested that they were entirely too numerous, and that one for every one hundred thousand in a city of this size would be sufficient. I do not think there is any objection on the part of the committee to change that to a smaller number, Judge Reed, if in your judgment it would require a larger number in the city of Pittsburgh. We simply arbitrarily took five hundred thousand as the dividing line between the larger and small cities and provided for fifty thousand in the smaller and one hundred thousand in the larger. I am sure there is no objection to changing this figure.

Mr. REED. Mr. Chairman: I think that should be fifty thousand.

Mr. KELLY. Mr. Chairman: If our chairman will accept that, we will say fifty thousand in all cities.

Mr. REED. Mr. Chairman: Exclusive of cities of the first class?

Mr. KELLY. Mr. Chairman: Exclusive of cities of the first class, there would be no objection to that.

The CHAIRMAN. The report will be considered as amended in that respect.

Mr. KELLY. Mr. Chairman: I might suggest that when this particular clause was prepared the following clauses which we have not arrived at yet which apply only to Philadelphia had not yet been formulated, and the thought in the mind of the draftsman of the clause under consideration was to cover all cities, including the city of Philadelphia, there being a special clause in article V, section 9, for Philadelphia, which may necessitate some change in the language of this paragraph 8.

Mr. FISHER. Mr. Chairman: From my observation the abuses most complained of in the administration of the office of justice of the peace arise from the fee system. I would like to ask Judge Kelly whether or not his committee gave thought to some system of minor judiciary which would relieve that evil.

Mr. KELLY. Mr. Chairman: I would say in answer to the gentleman from Indiana that the committee did consider the question of providing some other system of jurisdiction in the smaller and minor matters, but it was the thought of the committee that it could safely be left to the legislature, and it would then be left more elastic. If some system which might be formulated should prove to be ineffective or unsatisfactory, it could then be changed, whereas if we provided specifically in the Constitution for some rigid form of inferior courts, we would be committed to it regardless of how it might work out. It further was thought that the use of the word "may" as to boroughs and cities would leave the matter entirely to be worked out by the legislature and simply retain the word "shall" with reference to townships; the thought being that it would be important that we should always have justices of the peace in the townships. We seldom have any complaints in the townships, and in the matter of taking acknowledgments and administering oaths, and a number of things, we thought probably that that should be retained; so that it is perfectly feasible and will be perfectly legal under this clause, taken in connection with the first clause of the judiciary, which provides for such other courts as the general assembly may from time to time establish, for the legislature to provide for any form that it in its wisdom may see fit to provide for in the matter of the inferior courts.

The CHAIRMAN. The Chair believes that this is one of the most important reforms that this Commission can consider. The Chair's experience for six years as the district attorney of the county in which he lives, and his subsequent experience leads him to the thought that some of the worst misunderstandings, particularly of the foreign population, we have as to our government grow out of their contact with the minor judiciary, and therefore the Chair has attempted to draft a substitute for the report of the committee which the Secretary will read.

The Secretary read the substitute as follows:

Section 11. For the better administration of justice each county of this commonwealth, except Philadelphia county, shall be divided by the court of common pleas of the judicial district in which such county or counties may be into districts to be known as justice of the peace districts. A borough, town or township may constitute a separate district, may be divided or may be joined with one or more other boroughs, towns or townships, as the court shall see fit. Each city, other than the city of Philadelphia, shall, separately or joined with one or more boroughs or townships, or both, constitute a separate district, and shall be entitled to at least one justice of the peace. Cities containing a population of four hundred thousand or less

shall be divided into convenient districts for each fifty thousand inhabitants; cities containing a population of more than four hundred thousand shall be divided into convenient districts for each one hundred thousand inhabitants.

The Governor shall commission one person as justice of the peace for each district herein provided for, to serve for a term of six years if he shall so long behave himself well. Any such justice shall be removed for cause by the Governor on his own initiative and after hearing, or upon a certificate of unfitness issued after hearing by the proper court of common pleas. Vacancies in the office of justice of the peace shall be filled by the Governor.

No person shall be eligible for appointment who has not resided within the territory comprised in the respective district for a period of two years prior thereto. No person who is not learned in the law shall be appointed as justice of the peace in any district containing a city. Every justice of the peace shall reside in the district for which he is appointed during his term of office.

For all services rendered in any judicial proceeding, justices of the peace shall receive a salary which shall be in lieu of all other compensation, and which shall be fixed by law and paid by the proper county. All fees received for any such services shall be paid into the county treasury for the use of the county.

The jurisdiction and powers of the justices of the peace hereinbefore provided for shall be the same as now conferred and exercised by justices of the peace, and such as may hereafter be conferred by law.

All justices of the peace now in office shall serve out their unexpired term, after which time the office of justice of the peace, as it existed immediately prior to the adoption of this provision, is hereby abolished.

The general assembly shall, at its next session after the adoption of this Constitution, enact such laws as may be necessary to carry this section into effect.

Mr. CUYLER. Mr. Chairman: I second the substitute.

On the question,

Will the Committee adopt the substitute?

The CHAIRMAN. The Chair desires to say that he has no pride of opinion in this substitute as proposed. He wants to hear it freely discussed. It is only offered as a tentative suggestion for one of the most crying evils that exist in the state today. It did seem to the Chair that if the courts created justice of the peace districts and the Governor appointed the justices of the peace, the justices of the peace would then become the officers that it was intended in the common law they should be, because it is the opinion that high-grade men would be called to the state service and the justices would be of real value.

The question then is on the substitute that has just been read and copies of which I think are on the desks of the members of the Commission. I think there is to be added the word "aldermen" in two places that is not in the draft before us, as the Secretary read it in; it was inadvertently left out in the hasty preparation of the draft.

Mr. CARSON. Mr. Chairman: In order that we may have the benefit of the views of the members of the Committee of the Whole, I should like, before the question is put to a vote, full discussion. I have overheard some conversation across the desks which I would like very much to hear expressed in the open.

The CHAIRMAN. So would the Chair. What we are all anxious to do, I am sure, is to work out some solution of this question, of this critical situation, that will be to the credit of the state.

Mr. REED. Mr. Chairman: Could we postpone this particular section to be taken up immediately after recess, so that we will have an opportunity to fully consider it? It is particularly complicated—

The CHAIRMAN. The suggestion is all right.

SECTION 11 OF ARTICLE V POSTPONED.

Mr. ALTER. Mr. Chairman: I move that further consideration of this section and the substitute be postponed until after the luncheon recess.

Mr. REED. Mr. Chairman: I second the motion.
The motion was agreed to.

ARTICLE V, SECTION 12.

The CHAIRMAN. The next section in order for consideration is section 12 of article V of the Constitution, the report of Committee No. 2 being that section 12 be stricken out and the following substituted.

The Secretary read the section as follows:

Section 12. In Philadelphia the office of magistrate is abolished and there shall be established in said county eighteen courts not of record of police and civil cases, with jurisdiction not exceeding two hundred dollars. The general assembly shall divide said city into eighteen numbered districts of compact territory, as nearly equal in population as may be, but shall not include a part of a ward in any district. Such courts shall be held by judges, whose term of office shall be six years, and the said judges shall be elected by the qualified electors in the respective districts at the municipal election in the odd-numbered years. The judges shall be compensated by fixed salaries to be paid by the county; they shall exercise such civil and criminal jurisdiction as is exercised by justices of the peace, except as herein provided, or as may be changed by law, but no law shall increase the amount of their civil jurisdiction or confer upon them political duties. The rules of practice and procedure in such courts shall be established by the supreme court, and when so established and published, as provided by law, said rules shall have the force of a statute. The boundaries of the districts of said courts may be changed by the general assembly from time to time, but not more often than once in every ten years, at which time also additional districts may be created, but not, however, so that the total number of said districts shall be more than one for every one hundred thousand of the population of said county. The said courts shall be known as district peace courts, and the said judges as district peace judges. The general assembly shall, at its next session after the adoption of this Constitution, pass such laws as may be necessary to carry this section into effect, fix the costs of proceedings in said courts and provide for the relief from payment of costs of such persons as would be unable without hardship to pay the same.

On the question,

Will the Committee adopt the report?

DISTRICT PEACE COURTS IN PHILADELPHIA.

Mr. CARSON. Mr. Chairman: I should like to have a member of the committee, who is especially familiar with the Constitution, and who has given much time and consideration to the draft that is now under consideration, to take the floor; I would like Judge Gordon to do as Judge Kelly did and expound that particular section.

Mr. GORDON. Mr. Chairman: I think this provision ought probably follow the one offered by yourself with reference to justices of the peace throughout the state, but I would state the thought which moved the committee, and induced it to adopt this provision, and myself to offer it, although I have not given any great or profound study to the question. I therefore want to disavow any such merit. At the present time the Constitution provides that there shall be established in Philadelphia a district for every thirty thousand of population, and there are at the present time twenty-seven, each filled by a magistrate who has the jurisdiction of a justice of the peace, and in civil cases his jurisdiction is limited to one hundred dollars. They are elected on a general ticket; they have been now in operation for over forty years, and have proven I think a failure. Why this failure? It would probably be impossible to say with definiteness. One does not like to arraign as large a body of public officers as the magistrates of the city of Philadelphia, but I am sure I speak well within the terms of moderation when I say that an

enormous majority of the citizens of Philadelphia want to see the magistrates' courts abolished. I think also I might say without any invidiousness that the character of the magistrates in the city of Philadelphia has not been such as would make them public servants having the confidence of the community, and in many instances they have been a source of criticism for their personal and official character, and altogether have become obnoxious to the people. To abolish those magistrates, as the committee did, required something to be put in their place. We have to have the minor judicial offices. Formerly we had aldermen, and they were abolished by the Constitution of 1874. Therefore the question occurred, who should take the place of the police magistrate in exercising the primary jurisdiction of justices of the peace? The first thought that occurred was that the magistrates were too numerous. The provision requiring one for every thirty thousand seemed to create an unnecessarily large body of minor judges. There may be good reason in the county districts for giving a justice of the peace to every thirty thousand population or less. Indeed, in the townships the population is very much less and a few thousand have the benefit of the justice of the peace. There is reason for it because of the extent of their territory and the mode of travel, but even that has been very much minimized by invention, and the farmer travels now with much more rapidity in various directions than he did formerly. It seemed, therefore, that thirty thousand was too small a number for the jurisdiction of whatever officer we put in place of the magistrate in the city of Philadelphia, and one hundred thousand was fixed as their number. There are probably one million seven hundred and fifty thousand or more inhabitants in Philadelphia; that is, each magistrate having over one hundred thousand. Therefore eighteen seemed to be about the proper number. It would be ten less than the existing magistrates. But what sort of a primary judge, what sort of a magistrate should he be? What could be done to elevate the office? What could be done to make it one of more practical usefulness than it is at present? At the present time these magistrates are mainly concerned with station houses. I think nearly every station house has a separate magistrate who comes there daily to hear the criminal cases. Some of them have considerable civil jurisdiction. The return of their fees which is required to be made by them to the city treasurer shows that a great many have very little business and a few, especially those whose districts are in the center of population, have a great deal. But what could be done to increase their usefulness? What could be done to give them greater dignity? Well, first, the term "police magistrate" itself seems to be rather of an inferior style; they immediately come to have the thought in the public mind of being solely connected with the administration of justice, of being merely justices of the peace who hear police cases, who come early in the morning, and sometimes not with all their faculties awaké, to hear the cases of the drunks in the station house. Now, the character of a judge's jurisdiction may sometimes reflect disastrously upon himself. If these lower courts, therefore, in the city of Philadelphia had their names changed, we thought that of itself might make some little difference, some little advance. Of course, it would count for nothing, because the weed would smell just as offensively called by any name. But, to increase their territory and raise their juris-

diction, the civil jurisdiction was raised to two hundred dollars for other reasons, as I will state. As they exist at present, these local judges have no rules except those which they establish for themselves, and those rules are not written rules, but are composed of the vagaries and temperaments of the different magistrates themselves. Since we raised their civil jurisdiction, it therefore appeared that it would be a wise thing to give these courts a definiteness in their practice and procedure, and hence the thought that the supreme court should define the rules of practice and procedure of the magistrates' courts in Philadelphia. This would not only give regularity and uniformity and all the benefits of clearly thought-out procedure and practice by a competent body, but it would also carry with it a sort of moral and possibly legal supervision of them by the supreme court. Also that court could from time to time make such changes in the practice and procedure as public exigency and public demand would seem to require. In fixing the jurisdiction of two hundred dollars, also, it was believed that there would be some relief in the matter of small litigation. At the present time civil jurisdiction is one hundred dollars; beyond that one must go into the municipal court or the common pleas court. Now the lawyers here know, and probably the laymen have had some knowledge also in original jurisdiction, that while it is inexpensive to a certain class of the community, it is very expensive to others, and is a barrier also in many cases to the pressing of otherwise just claims. In the new municipal court in the city of Philadelphia there is a requirement, where either party desires a jury trial, that the jury fee shall be paid in advance as well as the other costs. If two hundred dollars were made the jurisdiction of these magistrates in the city of Philadelphia, and if the office were established by the legislature, as this provision requires that it shall be, and that provision were also made through an act of assembly that persons who would find it a hardship to pay the cost may under the provisions of a well-considered act be relieved from it, it was thought that a large number of civil cases might be brought to a determination very expeditiously and cheaply for that class of the community which needs justice and very often cannot afford to pay for it. Of course, in Philadelphia we suffer from certain evils in official life which are peculiar to us. I do not mean peculiar to us as individuals, as a social unit, but peculiar to us as living under certain political sentiment and in a certain political atmosphere, an atmosphere which is all-pervading and a sentiment which is so general, almost universal, that the dominant party there has a majority so ample that it can do pretty much what it pleases in the election of officers depending upon the vote of the entire municipality. Now, the existing magistrates are elected on a single ticket and voted for by the whole city with the result that the dominant party can elect the two-thirds which they are allowed to vote for under the existing law without difficulty. There could not be a successful contest made throughout the whole city on any one magistrate or inferior officer of a bad character, and also since the existing law provides for minority representation on these courts, the majority party carries along the minority as a tag to its heels, and in practice elects the minority magistrate, and elects them on the entire ticket. It was, therefore, thought that there might be some gain in the election of these magistrates if they were elected

in their district by this method of computation, assuming that the majority of the dominant party in the city is limited to twenty-five thousand. The average majority, therefore, in eighteen districts would be about seven thousand, but many of these districts would have a very much larger majority than that, and some would have a very much smaller majority than that, and then there would be an opportunity for the electors voting in the particular separate districts to make selections based upon fitness and character; and also the whole matter would be robbed to a large extent of its political aspect, because an entire ticket of twenty-eight magistrates would not be elected throughout the whole city by one vote, and also it is to be assumed that these magistrates in separate districts would by and by come to have a character peculiar to the districts and peculiarly known to the people of that district, so that if they come up for reelection in that district there would be a chance to defeat a bad magistrate and to elect a good one. Therefore, there is a greater opportunity for the exercise of choice and discrimination when the magistrates are elected in the separate districts rather than on entire tickets. These are the general thoughts, I think, which actuated the committee and which were in my mind in making this suggestion which is incorporated in this amendment. I have no particular fondness for this child which has not been born with any great labor, but it has a suggestion in it which I think might probably be improved upon by the members of this Commission. That suggestion is that in Philadelphia these minor courts may be made more important in their jurisdiction, more dignified in the character of their procedure, more responsible to a great body like the supreme court for the character of their proceedings, and more amendable to the popular voice in that they are elected in districts and not over the entire city. I believe these are the main thoughts which operated to induce the committee to report this provision.

The CHAIRMAN. The Chair with much greater modesty even than in the case of the presentation of the former substitute, and with very much less knowledge on the subject of the minor judiciary in Philadelphia than he has of the minor judiciary of the country—never having appeared as counsel before the minor judiciary in Philadelphia but once, and believing that trials there were by wager of battle and not by wager of law, and therefore being glad to escape—submits to the Commission a substitute for the report of the committee with very much less certainty of judgment than he had in the former one.

The substitute was read by the Secretary as follows:

Section 12. In Philadelphia the office of magistrate is abolished and there shall be established in said county eighteen courts, not of record of police and civil cases, with jurisdiction not exceeding three hundred dollars. The court of common pleas of said county shall divide said city into eighteen numbered districts of compact territory, as nearly equal in population as may be. Such courts shall be held by judges learned in the law, who shall be appointed by the Governor, and whose term of office shall be six years, if they shall so long behave themselves well. For any reasonable cause, duly found by the court of common pleas of said county after public hearing, any such judge may be removed from office, and the Governor shall appoint his successor. The judges shall be compensated by fixed salary to be paid by the county; they shall exercise such civil and criminal jurisdiction as is exercised by the court of common pleas, and when so established and published as provided by No law shall increase the amount of their civil jurisdiction or confer upon them political duties. The rules of practice and procedure in such court shall be established by the court of common pleas, and when so established and published as provided by law, said rules shall have the force of a statute. The boundaries of the districts of

said courts may be changed by the court of common pleas from time to time, but not more than once in every ten years, at which time also additional districts may be created, but not, however, so that the total number of said districts shall be more than one for every one hundred thousand of the population of said county. The said courts shall be known as district peace courts, and the said judges as district peace judges. The general assembly shall, at its next session after the adoption of this Constitution, pass such laws as may be necessary to carry this section into effect.

Mr. GORDON. Mr. Chairman: I second the substitute.

On the question,

Will the Committee adopt the substitute?

SECTION 12 OF ARTICLE V POSTPONED.

Mr. CARSON. Mr. Chairman: I move that this draft go over in the same way as the previous one so that we may consider the two drafts together after the recess.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. On reading the sections somewhat hastily, the Chair would gather that there ought to be some changes in language. I mean that the language of the two sections ought to be the same, particularly on the question of removal. I drew one with one thought, and the other with another thought, but it seems to me that they ought to be considered as drawn in parallel language.

ARTICLE V, SECTION 13.

The CHAIRMAN. The next section in order for consideration is section 13 of article V of the Constitution, the report of Committee No. 2 being that section 13 be retained as it stands in the present Constitution.

The Secretary read the section as follows:

Section 13. All fees, fines and penalties in said courts shall be paid into the county treasury.

On the question,

Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: That simply provides that all fees, fines and penalties in said courts shall be paid into the county treasury. Do you think that ought to stand?

Mr. REED. Mr. Chairman: "All fees, fines and penalties in said courts shall be paid into the county treasury." Does that include all justices of the peace and magistrates?

The CHAIRMAN. I take it for granted that it would.

Mr. REED. Well, but in your section, referring to justices of the peace, he is just a justice of the peace; are there any fees that ought to go into the state treasury and not into the county treasury? I am asking that simply for informaion.

The CHAIRMAN. It would seem that that section will require some recasting if we decide on the minor judiciary section. If that should be done it could be reconsidered in the light of the changes made in this section.

Mr. PEPPER. Mr. Chairman: I move that consideration of this section be postponed to await the action of the Committee of the Whole on section 5.

Mr. CARSON. It ought to be section 4.

Mr. PEPPER. Section 4, I beg your pardon; I withdraw the motion. I was under a misapprehension, I thought that section 5 was the one that we were going to take up this afternoon.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 14.

The CHAIRMAN. The next section in order for consideration is section 14 of article V of the Constitution, the report of Committee No. 2 being that the present section 14 be stricken out and the following section be inserted in lieu thereof.

The Secretary read the section as follows:

Section 14. In all cases of summary conviction in this commonwealth or of judgment in suit for a penalty before a magistrate or court not of record, either party may appeal to such court of record and on such terms as may be prescribed by law.

On the question,

Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: The substantial change between the suggestion as made and the section as it now stands is that we strike out the words "upon allowance of the appellate court or the judge thereof upon cause shown," because it is always embarrassing to the court to issue a writ of special *allocatur*.

Mr. FISHER. Mr. Chairman: May I call the attention of the Commission to the word "magistrate" in this section? Is it the proper term in the proposed changes?

Mr. CARSON. That will have to be taken out in order to make it conform, if we abolish the magistrates, and call them something else. We ought to take care of that.

The CHAIRMAN. It occurs to the Chair that the word "magistrate" as used in this section is used in its broad generic sense, and not as applying to magistrates as denominated in the Constitution, because the word is used as to all magistrates, justices of the peace and aldermen.

Mr. CARSON. We might say all judicial officers which would make it comprehensive. I move to amend by striking out the word "magistrate" and insert in lieu thereof the words "all judicial officers."

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE V, SECTION 15.

The CHAIRMAN. The next section in order for consideration is section 15 of article V of the Constitution, the report of Committee No. 2 being that the present section be stricken out, the substance having been incorporated in section 4 as recommended.

The Secretary read the section stricken out as follows:

Section 15. All judges required to be learned in the law, except the judges of the supreme court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years, if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each House of the general assembly.

On the question,
Will the Committee adopt the report?
It was adopted.

ARTICLE V, SECTIONS 16 AND 17.

The CHAIRMAN. The next sections in order for consideration are sections 16 and 17 of article V of the Constitution, the report of Committee No. 2 being to retain the present sections.

The sections were read by the Secretary as follows:

Section 16. Whenever two judges of the supreme court are to be chosen for the same term of service each voter shall vote for one only, and when three are to be chosen he shall vote for no more than two; candidates highest in vote shall be declared elected.

Section 17. Should any two or more judges of the supreme court, or any two or more judges of the court of common pleas for the same district, be elected at the same time, they shall, as soon after the election as convenient, cast lots for priority of commission, and certify the result to the Governor, who shall issue their commissions in accordance therewith.

On the question,
Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: Just as they are in the present Constitution.

The CHAIRMAN. Then the report is to re-enact them?

Mr. CARSON. Mr. Chairman: To re-enact them, to reincorporate them.

Mr. FOX. Mr. Chairman: It seems to me, as a member of the committee, and I so voted in the committee, that section 16 should be stricken out. My reason for suggesting that is that under the present method of electing our judges, under the non-partisan method, there is no reason why this provision should continue. The idea of section 16, as I understand it, originally was to give a minority representation in the supreme court, of course, with the idea of making the court non-partisan. We now have an entirely different system of electing judges of the supreme court, and one which was designed by the legislature to make that court and all other courts non-partisan, and therefore it occurred to me that where there are two vacancies or three vacancies to be filled, there is nothing to be gained by depriving the voter of the right to vote for two or three candidates as the case may be. I therefore move that section 16 of this article be stricken out.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,
Will the Committee adopt the report as to section 17?
It was adopted.

ARTICLE V, SECTION 18.

The CHAIRMAN. The next section in order for consideration is section 18 of article V of the Constitution, the report of Committee No. 2 being that the present section 18 be amended.

The Secretary read the section as follows:

The justices of the supreme court, the judges of the superior court and the judges of the several courts of common pleas, and all other judges required to be learned in the law, shall at stated times receive for their services an adequate compensation, which shall be fixed by law and paid by the state. They shall receive no other compensation, fees or perquisites of office for their services from any source, or hold any other office of profit under the United States, this state or any other state.

On the question,

Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: The only change in that, sir, relates to the matter of compensation of judges, which is to stand in the Constitution as it now is, except that having put the superior court into the Constitution we have amended it to cover that change, and that is the only one that is made; justices of the supreme court and judges of the superior court, and so on, shall receive adequate compensation.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 19.

The CHAIRMAN. The next section in order for consideration is section 19 of article V of the Constitution, the report of Committee No. 2 being that the present section 19 be amended.

The Secretary read the section as follows:

The justices of the supreme court and the judges of the superior court during their continuance in office shall reside within this commonwealth; and the other judges during their continuance in office shall reside within the districts from which they shall be respectively elected.

On the question,

Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: Now, the only change is to require justices of the supreme court and the judges of the superior court to reside within the commonwealth; all other judges, however, to reside within their districts.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 20.

The CHAIRMAN. The next section in order for consideration is section 20 of article V, the report of Committee No. 2 being that the present section 20 be stricken out, the substance of this section having been incorporated in section 4 as heretofore reported.

The Secretary read the section as follows:

Section 20. The several courts of common pleas, besides the powers herein conferred, shall have and exercise within their respective districts, subject to such changes as may be made by law, such chancery powers as are now vested by law in the several courts of common pleas in this commonwealth, or as may hereafter be conferred upon them by law.

On the question,

Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: We found in this judicial article that its various jurisdictions, whether in common law or in chancery, were scattered promiscuously throughout the article at large. Now, we have gathered all up in a bundle and put them in one section so that we have lost nothing in the way of jurisdiction, but we have gained in a systematic and orderly expression of power.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 21.

The CHAIRMAN. The next section in order for consideration is section 21 of article V of the Constitution, the report of Committee No. 2 being that the present section 21 be amended.

The Secretary read the section as follows:

No duties shall be imposed by law upon the supreme court nor any of the justices thereof except such as are judicial, nor shall any of the justices exercise any power of appointment except as herein provided.

On the question,

Will the Committee adopt the report?

DUTIES OF JUDGES.

Mr. CARSON. Mr. Chairman: The only change in that, sir, is the use of the word "justices" in relation to the supreme court so as to make the language conform to what we have previously done. I wish to call the attention of the Committee of the Whole to the fact that it is justices of the supreme court alone who under this constitutional provision are exempt from the imposition of non-judicial duties. Some discussion took place in the committee as to whether or not it was wise to relieve the judges of non-judicial duty. For myself I should like to see a judge stripped of every particle of patronage that he has, except the appointment of his clerk, and put them on the same footing as the justices of the Supreme Court of the United States; then the interest of the politicians in the office would largely cease. With the disappearance of the power of granting liquor licenses, of course, the largest evil has been considerably diminished if not destroyed. The thought, however, was expressed in the committee, and therefore reported it out in this form so as to invite the opinion of the body at large, whether or not we could not still safely entrust to the judges, particularly in the larger cities, the performance of some such duties as the appointment of park commissioners, prison inspectors, members of the board of revision of taxes, members of the board of city trusts, and duties of that sort, because of the general confidence the community reposes in the judges. That was supposed to be a sufficiently strong force in overbalancing the odium of suspicion which may creep into the minds of some if the judges were to parcel out their favors among applicants for liquor licenses. We never had that trouble in Philadelphia. There were no suspicions, because the judges performed that duty very satisfactorily to the public. I think it was a very distasteful and disagreeable business, and they are glad they are rid of it. I do not wish to embarrass the discussion to any degree by the expression of any personal views. I would gladly see the judges relieved of every possible duty, except hearing the parties who come before them and deciding the cases, and having no hand at all in the appointment of any officer of any kind in which the politician may be interested, interested in the assessors who are the assistants of the board of revision of taxes, interested in the police appointed in the various parks, interested in the perquisites which are rather more theoretical than actual following from the appointment of prison inspectors, and matters of that sort. The judges so far as I have conferred with them on the subject are about evenly divided on the point. Some of them would be gladly rid of every duty of the kind, others rather like the matter and they say,

"Well, the fragments of our jurisdiction in this matter are such as not to invite any criticism. If we appoint prison inspectors we are really looking after the interests of those unfortunates, so to speak, whom we have committed to jail on a sentence under a verdict of conviction. In regard to the members of the board of the revision of taxes, leave that under our control, it being the board which fixes assessments on appeal of the dissatisfied citizens from the action of the assessor; let us retain some control or some connection with the board on appeal to the court of common pleas." With regard to the discharge of such high and responsible duties as taking care of the large interests for the public health, such as the great park which incidentally guards the water supply of Philadelphia, so far as the Schuylkill river is concerned, and in the administration of the important trusts where the city of Philadelphia is trustee, as under the will of Stephen Girard and many minor charities, which added together make a splendid constellation of charities glowing on the brow of the city of Philadelphia, judges would part with reluctance with matters of that kind, and I have never known of an occasion where the particular exercise of that power has met with any just criticism. In regard to the members of the board of public education there has been some criticism because it is said that the board is superannuated and it is very difficult to put out the old men from the various places where they have been so long entrenched. Now I think, so far as Philadelphia's point of view is concerned, I have placed the matter largely before the Commission, and invite the expression of views.

Mr. PEPPER. Mr. Chairman: I move an amendment to the pending section as follows: "No duties shall be imposed by law upon any court or upon any justice or judge except such as are judicial, nor shall any justice or judge exercise any power of appointment except as herein provided."

Mr. THORPE. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: I believe that the exercise of non-judicial power by the judges is an unqualified evil; that the ramifications are in most respects unfortunate, and that the removal of contact between the courts and the political and administrative activities in their several jurisdictions is going to be an unmixed blessing if it can be brought about. I am quite aware of all that can be said in favor of the wise exercise in particular cases of the appointing power now vested in the judges. It is very hard, living as I do in a community in which action of this sort by the judiciary has come to be accepted as a matter of course, to look at the thing dispassionately and otherwise than as affecting the interest of particular institutions and particular classes of people. But I must try to detach myself as much as possible from that which has come to be regarded as a matter of course in Philadelphia. I for myself have come to the conclusion that the system is unsound in principle, and that the only reason for retaining it is to be found in a sort of reluctance to disturb that which is, even if it is bad, for the reason that offense may be given to those who, because of their own pure motives in the matter, because they do their best under an evil system, do not clearly realize the unsoundness of the system under which they operate; so that while I am quite aware of the amount of disturbance,

and the amount perhaps of hostile criticism that will be evoked by such an amendment as I propose, I made up my mind that in the interest of sound administration such a measure ought at least be considered very seriously by this Commission, and as far as I am concerned I have come to the conclusion that I would advocate it.

Mr. CUYLER. Mr. Chairman: I fail to see that the system is an evil, or that it has proved itself an evil. We in Philadelphia have had certain officers appointed by the judges for a great many years. I think we all agree that they have been well appointed by the judges and politics have not entered into it. I speak with some knowledge. For more than thirty years I have been a commissioner of parks in Philadelphia. I think I am the second oldest commissioner, and I do not hesitate to say that in the vast development of the park system large expenditures of money have been better made by the commission appointed by the judges, with less extravagance, and with less political pull, than under any other system that might have been devised. I think it is a very grave question to upset what has been tried and found not wanting. I think the same thing applies to the board of charities. The vast trusts they administer are most important, and the men that have been appointed are men who have committed themselves to the well-being of the community and discharged their duties with great fidelity and great ability. I feel that we are proceeding upon the theory that theoretically things should not be as they are, that certain things are not right, when they are found in point of fact to be right and that we are going to enter very dangerous ground, and I am quite sure that the amendment suggested by Mr. Pepper will not commend itself to Philadelphia and that Philadelphia would not be in favor of taking away from the judges the power of appointment in these various offices. I do not recall a case in all of my length of service in the park commission of one judge ever writing anything, or ever making a suggestion as to an appointment, or in any way interfering with the administration of our parks. I hope we will think very seriously and go very slowly before we decide to make this change.

RECESS.

Mrs. MILLER. Mr. Chairman: I move that the Committee of the Whole do now take a recess until 2.30 o'clock this afternoon.

Mrs. WARBURTON. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1 o'clock P. M., the Committee of the Whole took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The Committee of the Whole reconvened at 2.30 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Committee having arrived, the Committee will be in order.

ARTICLE V, SECTION 21.

The CHAIRMAN. The pending motion before the Committee of the Whole is the amendment proposed by Mr. Pepper, which, in order that the matter may be fresh in the minds of the members, it might be well for the Secretary to read it.

The Secretary read the amendment as follows:

No duty shall be imposed by law upon any court or upon any justice or judge except such as are judicial, nor shall any justice or judge exercise any power of appointment except as herein provided.

On the question recurring,

Will the Committee adopt the amendment?

DUTIES OF JUDGES.

Mr. CUYLER. Mr. Chairman: I would like to ask Mr. Pepper how he proposes to provide for the appointment of commissioners such as he has alluded to.

Mr. PEPPER. Mr. Chairman: My answer would be according to the nature of the position to be filled. We have provided in another part of the Constitution for the creation of incorporated districts for special purposes, such, for instance, as the administration of a park, and in so far as Mr. Cuyler's question relates to the commissioners of Fairmount Park, my thought is that that body should become an incorporated district, and the members of the body should be appointed by the Governor. With regard to the board of city trusts, and with regard to the members of the board of education in Philadelphia, my thought is that those positions should be filled by the councils of the city acting upon nominations from the mayor. With regard to other cases not falling within either of the categories, there are some in which I think the appointment might be made by the mayor, subject to the confirmation of council, or by election by the municipal council. But the great and important bodies with which Mr. Cuyler and I are concerned in Philadelphia seem to me are those which should be provided as I have indicated in the case of the commissioners of Fairmount Park for example, or in the case of the board of education, or board of city trusts. My purpose is not to attain an unsound result for the sake of ridding the judges of an undesirable duty, but to accomplish two reforms, one to take off the courts the responsibility which seems to me not to belong to them, and the other to open the way for dealing with each appointive position according to its nature and by making the provision applicable to its specific situation and not covering them all in one broad generalization.

Mr. CUYLER. Mr. Chairman: The only thing I have to say is this: The commissioners of Fairmount Park, for instance, were created by an act of assembly of 1869, I think the late sixties. The whole question was debated very fully in the Constitutional Convention of 1873 as to whether that commission should be appointed by the judges of the court of common pleas, as it was then and is now, or whether to carry out the suggestion or idea of Mr. Pepper that all power of that kind should be taken from the court. After a very full debate it was decided to leave that power of appointment to the court. Since then that method of appointment has worked so well in the city of Philadelphia that the powers of the commissioners of Fairmount Park have been gradually very much increased, so it must have commended itself to the people of Philadelphia. For instance, under the original act, Fairmount Park was the only park in the city of Philadelphia under the jurisdiction of the commission. It has been so broadened now that all parks of Philadelphia come

under this commission. There is one park even larger than Fairmount Park, Pennypack Park. There are some seventeen or eighteen parks, not including city squares in Philadelphia, that now come under the commissioners of Fairmount Park. That plan has worked exceedingly well, and millions of dollars have been expended in those parks in their acquisition and maintenance. And so with the board of city trusts, with the millions at their disposal, it seems to me simply for the sake of carrying out a theory which may be technically sound we are treading on very dangerous ground to try to abolish that which has been tried and not found wanting, simply because in theory possibly it is not right. I feel it would be a very grave question when we come to submit the Constitution to the people of this state that those things that have been found not wanting and have been done well were simply abolished for a theory.

Mr. FOX. Mr. Chairman: It is quite natural I think that the illustrations that occur to my friend, Mr. Pepper, are those relating to a particular city, the city and county of Philadelphia, and perhaps it is equally natural that I should think of how the country districts would be affected if this change is embodied in the Constitution. As I reflect over the proposition, however, I am inclined to believe that such a thing as is proposed would affect the country districts very seriously, and would take away from the judges power which they are now exercising with very great satisfaction to the people of the state. The judges are obliged in the case of vacancies occurring in township offices, and in some cases of county offices, temporarily to fill those places by appointment, and the judges, knowing the people of that particular district as they do, it seems to me they perform that function more satisfactorily than any other appointive power could. I have never heard any criticism suggested of the common pleas judges or the appointments made as being dictated by political consideration. In so far as I have been able to observe, not only in my own county, but in adjoining counties, the function is very satisfactorily performed by them. It may be true that, as Mr. Pepper suggests, some changes are desirable in Philadelphia. It seems to me that Mr. Cuyler has given a very good reason why the park commissioners should still be appointed by the court. So far as the school board of Philadelphia is concerned, we in the country have found that the election of school directors has been most satisfactory. Men of high character are always willing to serve on the school boards of our districts, and I believe that if my friends from Philadelphia county could go back to that system they would probably find it entirely satisfactory. I therefore hope that the motion which Mr. Pepper has made will not prevail, and I think that the suggestion made by the committee is the one that should be adopted.

Mr. FISHER. Mr. Chairman: Judge Fox has voiced the objection which I have in mind to the adoption of the amendment as offered by Mr. Pepper. There are many minor duties performed by the judges in the country districts which would be disturbed by the adoption of the amendment submitted by Mr. Pepper. These duties are of a minor nature. I have never known, and I have rather a wide knowledge of the courts in my region, of any criticism on account of the performance of certain ministerial duties by the court. If this method is adopted, and you disturb the practice throughout the country, it is going to take a revision of a great many of the

laws. The courts in the country appoint or fill vacancies in many minor offices and particularly election offices. Now, we all know that election boards are likely to face the day of election with vacancies. Perhaps a member has died, or moved from the district, or something of that kind, and the judges in the emergency fill the vacancy by appointment. He can appoint a minor police officer and certain other officers, such as deputy constables and certain kinds of police officers that are especially provided for in the law. He also performs a service in canvassing the election where the district includes more than one county, such as in senatorial or congressional elections. There are many things which could be enumerated of that kind which I think we ought not to disturb. I am perfectly willing, if it is the thought of the members of this commission representing Philadelphia and Pittsburgh, to limit the provisions of Mr. Pepper's amendment to Philadelphia and Allegheny counties. I am inclined to think that any objection that may be raised to the appointing power vested in the courts comes from those two counties. This is particularly so in Philadelphia. I recall a few years ago, while I was serving as a member of the Senate, that certain legislation was proposed for the reform of the method of assessing properties in the city of Philadelphia. Many eminent men came here to argue that question. I happened to be chairman of the judiciary general committee which had the legislation in charge. I think Mr. Wanamaker was present and many other of the leading citizens, and many arguments pro and con were presented on the subject. It was astonishing, as I recall it, the trend of the argument against making the board of assessors down there an elective instead of an appointive board. I think the opposition, if I recall it correctly, was lead by Dr. Russell H. Conwell. Now this brings up the whole question. You have many important boards down there, such as the board of charities and the board for the control of parks, which are vested with very large and very important functions and duties. Perhaps it is only natural where the courts are vested with appointive powers that result in the control of large interests that pressure may be brought on the courts when it comes to the appointment of members of such boards. I can easily conceive that that is so. It is equally clear that these duties are not judicial. It may be just as well if they were once and for all severed from the courts of Philadelphia county. It has not been long since we had this same question threshed out in the legislature for Pittsburgh. There they had elective school boards. That is not very many years ago. A reform movement was inaugurated to abolish the elective office of school director. That was backed by the best citizenry of that great city, and the legislature, turning a ready ear to the arguments that were presented here, abolished elective school boards and established a centralized school board, appointed by the courts of Allegheny county. Now, it seems that that is not satisfactory, but I doubt if we can devise any scheme here that will be entirely satisfactory. It seems to me that there is a danger in fastening any provision in the Constitution that will make changes impossible in the future without an amendment to the Constitution. Would it not be better to allow the whole problem to be solved by the broader and freer action of the legislative branch of the government? But there is one thing I do object to. I can understand the arguments for and against this amendment so far as it affects Philadel-

phia and Allegheny counties, but there is one thing I do object to, because we have no evils resulting from it in the country, and that is the application of the amendment to the country courts. I would ask Mr. Pepper if he would not consent to an amendment limiting the amendment he has offered to the counties of Philadelphia and Allegheny.

Mr. PEPPER. Mr. Chairman: I have no objection to doing that. Although a contrary impression has been suggested, it is not in pursuit of a mere theory that this proposal is made. It is made for the sake of meeting a generally recognized evil. If the evil does not exist in the country districts, of course, there is no occasion for overturning what is established and something that works well in practice. It is quite true, as Mr. Cuyler has said, and I doubt if anybody would take issue with him, that the appointing of the park commissioners by the judges in Philadelphia has worked successfully, and has resulted always in securing for that branch of the public service an exceptionally high class of men. My own belief is that the same thing would have been true if the method of selection had been different. I think the nature of the activity rather than the method of appointment is the thing that accounts for the high grade of selections and the high standard of service in cases which are so much under the public eye and subject to such general, constant and minute criticism as is the case with the people's playground. I should be very reluctant, and I have special reasons for expressing that reluctance, because I have official relationship to the commissioners of Fairmount Park myself—I should be very reluctant to disturb the system that has worked so well if it did not seem to me that upon the whole even the welfare of that system requires different treatment from that which we have given it before. Mr. Cuyler's recollection is quite correct, as of course it naturally would be, that the commissioners of Fairmount Park owe their existence and authority to the act passed in the sixties, the act passed in 1867 and the act passed in 1868, and their supplements. Those acts, however, defined the jurisdiction of the park commission rather narrowly, and I happen to know from professional experience that scarcely any question now comes up with respect to any part of the jurisdiction of the commissioners, not confined to the descriptions given in these original acts, that is not made the subject of a challenge of jurisdiction of the commissioners to exercise their authority over the territory that has been added to their jurisdiction. I believe the time is coming very shortly when it will be essential that the right of the commission to discharge its important duties in the areas which have been confided to its care shall be placed upon a more definite and more certain basis than at present. As I have said, I believe that one of the obvious advantages of the provision made already in our work for incorporated districts applicable to particular interests, as for instance the park interests, is illustrated in the case we have in view. In regard to the board of city trusts, it is also true that an unusually high grade of men have been obtained to serve the public in that capacity, but when you have said that, I think you have said all that you can say. We are relieved from discussing the effect upon the courts of the jurisdiction to administer liquor licenses. I think it would have been very hard to find an open-minded citizen who advocated that method of administration excepting upon the theory that as those called upon to administer that in-

terest were likely to be injuriously affected by contact with it, it was less likely that the judges would be pulled down from a high level than would be true in the case of other groups of citizens that might be suggested. That is a lame argument and one that never appealed to me, but we are relieved from discussing that. I do not understand the gentlemen from the country districts to mean when they say that the exercise of non-judicial functions has never been the subject of scandal in their jurisdiction—I do not understand them to mean in their remarks to include the case of the liquor administration. My information is that in many of the counties of the state the election of the judge has turned upon his attitude towards his performance of a non-judicial duty. It seems to me to be absolutely contrary to sound sense and sound government. With regard to other cases of non-judicial appointment in Philadelphia, I have yet to hear anything said by way of extenuation of the present system. It seems to me to be absolutely unsound that a board of revision of taxes should owe its appointment to the judges of the court. It seems to me to be absolutely unsound that a board of education should owe its creation to an appointment by the court.

The power of taxation and the function of educating the people of the community are two far-reaching concerns of vital public import, and I can see no reason at all for continuing a system which brings the judges into politics and politics into the court, which reacts unfavorably upon the initiative and quality of the appointees and which results in public dissatisfaction respecting the way in which they discharge their duties. Now, I say I am not talking theory. I am giving my impression; it is the impression of an individual of limited experience, but I am giving my individual impression of how these things work in practice. I believe strongly that we are in the presence of an important question of distribution of constitutional functions, and I do not believe it is a case of following Senator Fisher's suggestion and leaving it to be dealt with by the more elastic process of legislation. I think for one that the Constitutional Commission should focus its attention upon the definition of the functions of the great fundamental departments of government, the legislative, the executive and the judicial, and if it be not true that we are concerned with defining the functions of the judiciary both affirmatively and by restraint, then I see no reason why we should be so careful to perform a similar function in the case of the legislative and the executive. But just because I am trying to deal with a situation, and not with a theory, I am entirely willing to yield to the views of those who say that the evil which I believe to exist in certain cases in the cities does not exist in the country districts. I am quite willing, therefore, to trust to the sense of the Commission on the situation as presented in the cities by amending the resolution that I offered so that it will be applicable only in the case of cities. The amendment would read thus, I take it: "No duties except such as are judicial shall be imposed by law upon the supreme court or upon any of the justices thereof, or in the counties of Allegheny and Philadelphia upon any court or judge, nor shall any of the said justices or judges exercise any power of appointment except as herein provided."

Mr. FISHER. Mr. Chairman: May I ask Mr. Pepper why he does not include the superior court as well as the supreme court?

Mr. PEPPER. Mr. Chairman: I left it in that respect as the committee had reported it. Mr. Carson gave his explanation. I do not want to raise another issue with the committee.

Mr. CARSON. Mr. Chairman: I think to include the superior court would be perfectly proper. Now, I do not wish to project myself into this debate before other gentlemen have spoken on the matter, but I have had some personal contact with a question of this kind. Under the bill which was called the Pittsburgh Ripper bill, a new method of assessing property within the greater city of Pittsburgh was fixed so that the members of that board could be appointed by the judges of the courts of common pleas of Allegheny county. The judges of that county resolutely declined to make the appointment, and so I was visited by some citizens of Pittsburgh at the time that I was Attorney General, and I was made acquainted with a situation which revealed very embarrassing conditions so far as the public credit was concerned. I was told that the refusal on the part of the judges to perform this duty left the county of Allegheny in danger of bankruptcy. There was no law by which any assessment could be properly made upon property. There was no power on the part of anybody to levy a tax fixed on an assessment, and the refusal of the judges brought the matter to a deadlock. I therefore took up the Constitution for study and I found on reading it that the only body sheltered by the Constitution from the imposition of non-judicial duty was the supreme court. I wrote to the board of judges in Allegheny county and asked them whether they would persist in their refusal. I pointed out that it was rather a delicate position, one that would be somewhat distasteful to me officially, to have the Attorney General mandamus the whole body of judges for apparent non-compliance with the law. I asked them to have the matter argued by counsel of high position so that there could be no idea that but one side of the question had been presented. Mr. David Watson argued on behalf of the board of judges. I was able to satisfy the supreme court, however, in getting a unanimous opinion that the constitutional provision only sheltered the judges of the supreme court, but let the judges in the common pleas court open to imposition of any duty which the legislature saw fit to impose upon them. Mr. Watson called attention to the early refusal on the part of the justices of the Supreme Court of the United States in the case of *Hilton* to perform the duty of fixing the amount of pensions due the Revolutionary soldiers shortly after the adoption of the Constitution, and the justices said "No, we are justices of the Supreme Court of the United States. We are not subject to the acts of Congress in adding to our labors the duties which are not judicial. We decline to perform the so-called duties."

Unfortunately they were not resolute in their resistance. They said, "While we will not obey under the terms of this act, we are perfectly willing to act as an advisory body and fix what in our judgment would be an equitable amount for pensions," and it was left in that unfortunate position. I was able to point out a distinction which I think was entirely sound that Congress clearly could not impose duties of that character on the court where the powers of Congress itself were limited under the Constitution, and they had no reserve sovereignty upon which to draw, whereas in a state legislature this sovereign power was absolute; except where the Constitution

of the state limits its authority, every authority not denied to the legislature can be exercised, and inasmuch as the prohibition of the Constitution fell as a bar against legislative action solely in protecting the supreme court it left the other judges open to the imposition of any kind of duty or any degree of duty that the legislature might see fit to impose. I then viewed the matter from the historical point of view, and I can throw just a little ray of light on the origin of what Mr. Pepper touched on when he was talking about liquor licenses. That was due entirely to the circumstance that William Penn, under his charter having the power to appoint judges and exercising that power entirely in his own pleasure, subject to no confirmation of anybody, finding that his quitrents were being withheld by the tenants, with whom he got into a pecuniary discussion, was in danger of impoverishment. In fact he was thrown as a debtor into a debtors' jail. His only possible relief was from the liquor licenses which his own appointees, the judges, were willing to grant, and in that way and from that time the question of the granting of liquor licenses got shunted into the judicial department of the government, where it did not belong. But having once established that historically, the legislature by a succession of acts, particularly regarding the city of Philadelphia, gradually imposed additional duties on the judges. They had been charged with the creation of the Fairmount Park commission under the legislation of the early sixties. They did it far earlier than that with regard to the appointment of wardens and the visitors to the eastern penitentiary. They did it also in regard to the local prison known as the prison of Moyamensing. They did it also under the Stephen Girard will, with regard to the appointment of trustees, although there was an act of assembly specifically passed with regard to trusts coming under the administrative powers of a municipality. With regard to the board of revision of taxes, I think the legislation on that runs back into the sixties, and there it is you begin to strike this sort of interest on the part of politicians. I am not using that term in an opprobrious sense, but in the sense of men interested in their pathics either through intellectual or sympathetic interests in the game of politics. I do not think the members of Mr. Cuyler's board have in any way been subject to pressure from the judges as to whom they should appoint as park guards, or park superintendents, or park engineers, or park gardeners, that large staff of men who are engaged in beautifying and taking care of so extensive an area as Fairmount Park, embracing about twelve thousand acres of ground. I would not think of that for a moment, nor do I think that it is at all within the range even of a possible accidental letter written at an early hour of the morning, when punctilio is not always alert, with regard to the appointment of members of the board of city trusts; but when you come to the appointment of a board which has also in its power the making of appointments of assessors of real estate in all the wards of our city, where those assessors have no co-ordination among themselves, no standards of valuation at all, but who lay the whole weight of taxation almost exclusively on the central wards, the seventh, the eighth and ninth wards of the city of Philadelphia, and in order to encourage the building of houses draw their revenues from the central part of the city and expend it on improvements on the outskirts, then you do get into a situation where political interest is alert. I do not know that it would be so, so

much with regard to the board of education, except that that comes closely home to the interests of the people in the public schools, and the charge was brought that octogenarians were retained who were obtuse as to methods of teaching and schoolhouse improvements; not obtuse, but inert. Now, I would not go as far as this and say that no advantages have been secured in the past, for there have been many resulting from a perfectly independent exercise of power on the part of the judges; yet, nevertheless, I believe the judiciary department is the sheet-anchor of our institutions, that the judges, when it comes to the push of pikes and the struggle between contending social forces begins as to whether the organic law shaped in the form of a Constitution shall be obeyed or not, ought to be absolutely free and fearless in the exercise of power without any ability on the part of any politician to throw in the face of the judge, "I helped place you there, and now you are endangering my political power as entrenched in the wards and districts which I control." I would like to see every vested power stripped from the judiciary except that which pertains to the administration of justice, and the administration of justice alone, in all its purity, in all its integrity, in all its sublimity, because it is the sublimest exercise of power under the government—the administration of justice, the holding of a balance so fine that there is no tipping of the scales one way or the other, and I would like to see all interests on the part of political managers cease forever, and I am not using this term in an opprobrious sense, but I mean the fact that the politician is interested in the ward leader and the ward leader says, "I want to go to the judge and get some sort of appointment, or have an order for a side-bar hearing, or a hearing in chambers, or something of that kind," is not only a perversion but is a degradation, and I would rid the judges, particularly in large cities, from every vestige except the power of appointing the prothonotary and clerks under him, and put them in the same position of proud independence and of loftiness as the Supreme Court of the United States now occupies in the eyes of the civilized world.

MR. CUYLER. Mr. Chairman: It does seem to me that the amendment proposed by Mr. Pepper is a most unfair and a most invidious one. Between the large counties of Philadelphia and Allegheny on the one hand, and the counties of the state on the other, the implication naturally would be that the power of appointment exercised by the judges had not been well exercised; that the system had been a failure. I do not understand Mr. Pepper at all to bring the proposed amendment upon that ground. At first I thought it was simply upon the ground suggested so well by Mr. Carson, that the judges should be relieved from all non-judicial duties; but now Mr. Pepper is looking at it from a practical standpoint, and the counties shall have their way, but Philadelphia and Allegheny shall be singled out, and the system that has worked well shall be abolished. I think that will raise a very dangerous issue in this state. There is a clear cleavage between the two large counties and the others. If Mr. Pepper is right in his theory, there is no more reason why judges of the country counties should have more power of appointment than the judges in the city of Philadelphia and the city of Pittsburgh. I hope, if an amendment is to be adopted, it will be the original amendment suggested by Mr. Pepper and not such a half-way measure as now proposed. My own belief is that you are tread-

ing on very dangerous ground. For the sake of getting rid of some conditions which have not been successful, you propose to abolish them all. I am sure so far as the county I represent, speaking for the county, the vast majority of the people of that county would be absolutely against the proposed amendment.

Mr. REED. Mr. Chairman: There is one thing that has not been said that I think Mr. Cuyler perhaps should think of. I suppose that he and his fellow-commissioners have been appointed by one court composed of three judges.

Mr. CUYLER. Mr. Chairman: No, we were appointed by all the judges.

Mr. REED. Mr. Chairman: In mass meeting?

Mr. CUYLER. Mr. Chairman: In mass meeting.

Mr. REED. Mr. Chairman: You have fifteen judges in Philadelphia county and fourteen in Allegheny county, and whenever there is an appointment to make they have to hold a general meeting, and I think my friend, Mr. Alter, can tell more practically than I can the pressure that is brought to bear on those twelve or fourteen men in regard to the appointment of some school director or whatever he may be. Now, it may be that conditions in Philadelphia are higher and purer than they are in Allegheny county and that such pressure is not brought to bear upon the judges in the case of appointments. Of course, I assume the park commission is a semi-sacred body, that by some sort of prescription is reappointed and reappointed and let alone, but I do not think there ever was any greater damage done to the judiciary in the estimation of the people than when they were handed the administration of the Brooks law. It has caused the defeat of able judges. It has caused the election of other men based on their sympathy either with or against the granting of licenses, and it never ought to have been imposed upon the judiciary. I do not go as far back in my recollection as Mr. Carson, back to William Penn, I happen to be two years older than he, but I remember the scandal that occurred through the granting of liquor licenses, and I think you will find in nearly every case in the county or city where the duty of appointment was imposed upon the judge, it has been because the people in their despair turned to the judge as the one officer left who could be trusted to perform that particular duty. But it was a severe test upon the standing of the judge in his own county. It has been a nuisance to many judges, I know it is to the judges of Allegheny county, to have to hold these license courts, and while in a measure that has been done away with, I do not agree with somebody here that the Brooks law is not effective, because it has been held that you cannot even sell near-beer without a license. However, the pressure of the Brooks law and the scandals that attached to it are probably things of the past, but thinking this out while listening to the other gentlemen, starting with a prejudice against Mr. Pepper's motion, I have brought myself around to the belief that taking this altogether, while it may be inconvenient and may require some additional legislation, after all the judge is better off without any power or patronage to dispose of.

Mr. KELLY. Mr. Chairman: I cannot add anything to what has been said in favor of this amendment. I believe in the principle, and I favor the principle as enunciated in this amendment, but I

am a little bit afraid of the last clause of this provision, "nor shall any of the justices exercise any power of appointment except as herein provided." I do not remember that the Constitution of 1873, or so far as it has been tentatively changed by this Commission, makes a change of any provision for any appointment by the court. Now, there are certain appointments which the court must have the power to make, or they might be very much hampered in the performance of their judicial functions. They appoint the court officers, if you please, or perhaps clerks or messengers. If they were stripped of all powers, as this literal language would strip them, they might not be able to function. It might be that the county commissioners in a given county might refuse to appoint the proper and necessary officers that are required around the courtroom, or courthouse. If I am wrong, maybe I can be enlightened on what is apparently a trivial or small matter. Nevertheless, it has been held heretofore that courts inherently possess the power regardless of legislation to make any order or decree which is necessary in order to administer justice. Speaking broadly, is not this language, the latter part of it, a little too sweeping, and might it not interfere with the powers which have always been supposed to be vested in the court?

Mr. PEPPER. Mr. Chairman: When I originally proposed the amendment, my thought was that the expression "judicial power" would certainly be construed as confirming to the judges those powers which it has been customary for the judiciary to exercise in and about the administration and organization of the court, but the debate has satisfied me that that might not be the view taken of the suggested language, and as we proceed rather informally here, and as our resolutions grow and change from moment to moment, I am taking the liberty of putting my resolution in a final form, which attempts to take account of the difficulty that Judge Kelly has just spoken of. In the form in which I propose it, it is this: "No duties except such as are judicial or relate to the organization and operation of the court shall be imposed upon the supreme court, the superior court or the courts in Philadelphia and Allegheny counties, or upon any of the justices or judges of said courts; nor shall any of said justices or judges exercise any power of appointment except as herein provided." Mr. Chairman, I feel the force of what Mr. Cuyler said about the inconsistency in theory in limiting such a proposal as this to any particular community in the state; but, as I said a while ago, it seems to me that we are dealing more with a condition than with a theory. It may be that in communities less thickly settled, where the population is not so dense, where civic and political conditions are different, you may have a perfectly healthy condition of things which does not conform to theory at all. There was a time when in a New England town the congregational minister discharged most of the functions of government in the town. There was an identification of the church and state, perhaps to an extent that would have been alarming to some members of this Commission if it had been seriously proposed as a governmental theory, but nobody thought of disturbing it because it worked well. It seems to me that when you come to such a case as the one we are considering, the real question is whether the imposition of non-judicial duties upon the judges tends on the whole in communities in which they live or do their work to

the public ill rather than to the public good. We are not overturning long-established systems merely to pursue a theory; nobody has made that clearer than Mr. Cuyler himself. On the other hand, if in the large communities the situation has developed the evils which I believe to be incident to non-judicial duties in Philadelphia, and as I learn in Allegheny county, then it seems to me that it is the part of wisdom to assert the sound governmental principle in its application to those communities, and wait before applying it elsewhere until conditions change so that an application is called for. It is for that reason that I am willing to accept Senator Fisher's suggestion and propose the amendment in the form in which I now present it.

Mr. CUYLER. Mr. Chairman: I desire to offer an amendment if it is in order. As I understand it now, Mr. Pepper has entirely abandoned the position he first took, the proviso that the judiciary should remain free from the appointive power, because it has been found this is an unsatisfactory exercise of this power. Now that may be the case with certain appointive powers in Philadelphia relating to certain boards. It certainly does not pertain to others. Therefore, it seems to me, if Mr. Pepper is right in his logic and those boards have proven successful in Philadelphia, let me say, for instance, in connection with the parks, I think it equally applies to the board of city trusts. It never has been a failure on the part of the judges in reappointing the commissioners as members of the board of city trusts; therefore it is not a political question, and I would move to amend that, sir, as follows: "but the appointment of the commissioners of Fairmount Park and the members of the board of city trusts in the county of Philadelphia shall remain as now provided by law."

Mr. CARSON. Mr. Chairman: I will second that amendment. I suppose you will think I am selfish, I being a member of the board of city trusts, and that we are patting ourselves on the back.

On the question,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: I hope I shall not be misunderstood, and I hope Mr. Cuyler is the only member of the Commission who misunderstands me. I am perfectly clear in my view that the imposition of non-judicial duties upon the judiciary is an evil, that it contravenes a fundamental principle in American government. I am also aware of the fact that there are situations in which the evil at any given time has attained negligible proportions, and I am too old to be willing to lead a reform movement to attack a negligible evil at the expense of arousing prejudice by a change in a system which, though unsound in principle, may have worked well in particular communities and particular places. But I contend that such is not the situation in regard to the places specified in the resolution. There I think the conditions are such that the unsound principle of imposing non-judicial duties upon the court has had its natural and logical effect under such political conditions as exist in our great city. While I entirely agree that the system is working well in the case of the two institutions that Mr. Cuyler's amendment has referred to, yet I am entirely satisfied that just as good results in the case of those institutions can be obtained under a non-judicial system of appointment. I believe that it would be a mistake in

dealing with great cities to make exceptions within the limits of those cities in the case of particular institutions, such as park commissions and the board of city trusts, so that I hope that that amendment will not prevail.

The CHAIRMAN. The Chair would like to have some information. Are the members of the board of city trusts trustees?

Mr. CARSON. Mr. Chairman: Yes, sir.

The CHAIRMAN. Well then, why is not the appointment of them as trustees, they are appointed as trustees, for instance, under the Girard will, why is not that a judicial function? I am only asking for information so that I may vote intelligently.

Mr. CARSON. Mr. Chairman: I do not think, frankly speaking, that the board of city trusts requires the protection of Mr. Cuyler's amendment. I do not know what the position of the park commissioners is; but certainly under the Stephen Girard will, where a definite trust is created, it was sustained finally by the decision of the Supreme Court of the United States, that the function of filling the vacancies in that trust was clearly an orphans' court proceedings, but by some singularity which took place during the time that Judge Brewster was counsel for the board of city trusts the jurisdiction got partly shifted over to the court of common pleas, and it has remained there ever since. I have not been sufficiently at leisure to ascertain how that curious shift of jurisdiction took place, but I would say that if any vacancy occurred hereafter in the board of city trusts, it is the function of the judges to fill it under that will, and that duty could not be shifted to some other body; but I am not at all clear about the park commission, and without refreshing my recollection on the various acts of assembly which run in my mind with regard to the various bodies, which I have enumerated a few moments ago on the floor, I do not know where you are going to repose the power of appointing wardens of the penitentiaries, wardens of Moyamensing prison, the members of the board of public education, the members of the board of revision of taxes, and the assessors who act as subordinate agents of it. That would require some study.

On the question recurring,

Will the Committee agree to the amendment to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee adopt the amendment?

Mr. ALTER. Mr. Chairman: I feel constrained to support the principle of the original amendment offered by Mr. Pepper. Judge Reed has described the procedure when appointments of importance or profit are to be made by a large board of judges. I suppose the same thing happens to a greater or less extent when the appointment is to be made by a small board of judges in a smaller county. Men who seek appointments will endeavor to bring influence to bear on members of the board of judges. For illustration, a man is likely to come to my office and say "I have secured the support I think of judge so and so. I was in to see Judge Reed, and Judge Reed said you are the man to influence that judge." But I do not think, Mr. Chairman, it would be appropriate to limit the application of this principle to the counties of Philadelphia and Allegheny. As to the inconvenience which might result in the smaller counties with reference to the appointments now made by judges in filling vacan-

cies in minor offices, we have that same thing in our county because there are portions of our county which are just as much a part of the country as Indiana or any other of the more remote communities of the state. The appointment of a constable to fill a vacancy, the appointment of a member of an election board to fill a vacancy, the appointment of the chief burgess of a borough to fill a vacancy, those appointments are made by the quarter sessions court, but the legislature has started to depart from that practice, and in some cases I think—the appointment of tax collectors, if I recall correctly, is one in which the legislature has already provided that the appointment to that office in case of a vacancy shall be by the county commissioners. And there is no reason why all of these minor appointments which are now made by the judges of the court to smaller offices, to which I have referred, might not be filled satisfactorily by the county commissioners, or some other body chosen by the legislature. Therefore I would favor the original amendment proposed by Mr. Pepper, but not the one which singles out these two counties.

Mr. CUYLER. Mr. Chairman: I move, sir, as an amendment to that that it be made to apply to all the counties.

Mr. PEPPER. Mr. Chairman: I would be very glad to accept that as a restatement of the resolution in its original form. I feel myself at a disadvantage in dealing with the situation outside of the larger cities, because I do not know to what extent the evil of non-judicial appointment has made itself felt there. But I think perhaps it would help to clear the air if the suggestions made by Mr. Alter and Mr. Cuyler were to be acted upon, and therefore I will withdraw the suggested amendment which limits the operation of the resolution to Philadelphia and Allegheny counties, and if the Chair thinks that that does not too much complicate the parliamentary situation the vote can be taken on the resolution in its more general form.

The CHAIRMAN. The Chair for information would like to ask whether the construction of Mr. Pepper, for instance, would be that the sitting of the court on tax appeals, which is a function performed by judges in the country, is a judicial duty. My own judgment is that it is not; but where does that land us in the country? We have no place to go, we have no board of revision of taxes; where do we land if that is not performed by the judges? One of the judges in my county has been sitting for weeks revising the assessments of the city of Chester. Now, of course, you cannot file a bill in equity to raise the question; that must come up on the tax appeal or from the assessor or the county commissioners. If that is a non-judicial function, if we are not to leave that thing to the court, we are going to leave a very important thing in the air. My own judgment is that it is not a judicial function. I do say that it is not, but that is my impression.

Mr. FISHER. Mr. Chairman: As I undersand it the motion now pending is for the adoption of the amendment suggested by Mr. Pepper. Then Mr. Cuyler has made a motion to amend the amendment by striking out the phrase "in the counties of Allegheny and Philadelphia." That makes it apply generally to the judiciary of the entire state. Now I hope, Mr. Chairman, that that motion will not prevail. I hope that our friends from the great cities of Philadelphia and Allegheny will not assume to speak for those of us who are from the country. We think we know something of the conditions

in the more sparsely settled sections, and we know something of the problems that come before the court that are non-judicial. Of course, there is a very exalted principle, a very sacred principle involved, but sometimes the most sacred principle must yield a little to expediency. Now in a great center like Philadelphia or Allegheny there can be little inconvenience, as I see it, to strip the court of all these powers; that is where most of the evils subject to criticism have grown up. You want to cure it by striking down the system of non-judicial functions in the entire state that have been vested in the court from time to time. Now there are no such evils as those complained of in the country. Mr. Chairman, you have made one suggestion. I do not see how you can provide a proper authority to perform the particular functions to which you have referred now vested in the country courts. Now it is no reflection, I may say to Mr. Cuyler, on the courts of Philadelphia or Pittsburgh that a distinction should be drawn between them and what we may term the country courts. The conditions are entirely different. If that were not so the matters complained of here would not come up for discussion. I have been trying to think over the state and to raise in my mind one complaint, aside from the matter of the granting of licenses, that has ever arisen because of the faulty manner in which the country courts have performed these minor non-judicial functions. I do not recall one. Doubtless, there may have been some, but the evil that has arisen in the country is absolutely negligible, and if we broaden this provision to include country districts we are going to be confronted with a great many problems. I wish I had the time to make a complete examination and list of the non-judicial functions that are now being performed by the country courts. That is impossible in this extemporaneous discussion, but we can think of them in connection with the conduct of elections, the returns of the primary elections, appointments to vacancies and many minor duties of that kind. Now then, I would apologize if I felt that my suggestion in any way reflected upon the courts in Allegheny and Philadelphia. That is not the intention. I simply make the suggestion in order that the restriction may apply only to these great centers where these minor duties can be readily performed by some other agency, and where the need of the performance of these duties may not rest in the court as a matter of necessity; and that in the country we may be permitted to go along in the even tenor of our beaten paths. We ask that you confine this measure, this much needed reform, as I gather it from the debate, to the places where it is really needed.

Mr. GORDON. Mr. Chairman: The provision as it is before the Committee seems to me to have two stems to it. The first appears to me to relate to future legislation, and in that respect I suppose no one could object to have it apply to all the courts, both the superior court and common pleas, and to all others throughout the state. I read the first part of this resolution, "No duties except such as are judicial or relate to the organization and operation of the courts shall be imposed upon the supreme court." Now I see no reason why that should not apply to all of the courts of the state in the future. Then there follows towards the end, "nor shall any of said justices or judges exercise any power of appointment except as herein provided." That I suppose is intended to aim at powers now vested in the judges and intended to prohibit them in the future

from exercising those powers, and if that be the intent of the draftsman of this amendment, it seems to me the first part of it might very well be acceptable even to the country members who think their courts ought to be allowed to have this patronage and power. I point that out to the Committee, and while I am on my feet I want to say that I am in full accord with the principles stated by Mr. Pepper, and by Mr. Carson, and the others who have spoken on the same side, and I shall so vote. I should prefer to vote upon the proposition as applicable to all the courts of the commonwealth, and while it may be inconvenient for a time, yet the legislature can ultimately pass the needed laws to dissolve the functions now in the court with respect to the appointment of other public officers. I think it is rather invidious to select the courts of Philadelphia and Allegheny out of the whole mass of courts, and I would prefer that were not done; but if the article in its full strength cannot be obtained I shall take what I can get and vote even for that suggestion.

The CHAIRMAN. Will Mr. Pepper be good enough to read the section as it will read after amendment?

Mr. PEPPER. With the Chair's indulgence, I will do so in one moment.

The CHAIRMAN. Certainly. I might say that I think some of the members from the country would prefer the amendment if it keeps the principle; with the principle I myself am in accord. If the last sentence could be stricken out and the principle maintained, then I think the situation that has bothered me in my own mind could be relieved. I do not see where certain functions now performed by the courts of the country ought to be placed if the judge cannot appoint; that is, we have no central authority. Is it to be said, for instance, that the burgesses in boroughs are to be appointed by the county commissioners? I can think of no place where we could put the power except in the courts for all the many functions that are now performed by the courts in the country, because there is no other place to go. I do not know what Judge Kelly's thought about that may be; he has had a wide experience both as a practicing lawyer in a busy county and as a judge. Where would the power of appointment be distributed?

Mr. KELLY. Mr. Chairman: Of course, there would have to be legislation to provide for the hiatus, because there are a lot of appointments, particularly appointments to fill vacancies that now have to be made by the courts, and unless there was some provision made for their being made by some other body there would be great practical difficulty and trouble. I can see where the burgesses of boroughs could be appointed by the council of boroughs, for instance, if the legislature would say so. There are some other offices that would be not quite so convenient. I do not know how a constable would be appointed in case of a vacancy if it were not for the court. Speaking for myself, it has always been a most disagreeable part of the judicial duty to make these appointments, and therefore I feel in favor of the general principle that if in any practical way that can be taken away from the court it ought to be done, but it might

disturb existing conditions quite a bit in the smaller judicial districts of the state, unless some other provisions are made in connection with this to carry things along.

The CHAIRMAN. It is possible that in the recess time that we will take after this week's meeting, if we complete our work now we can formulate something that will take care of the situation if the general principle is adopted.

Mr. FOX. Mr. Chairman: In line with the suggestion that you have just made it appears to me that we might adopt the language in the amendment of section 9 which you introduced this morning. "The general assembly shall at its next session after the adoption of this Constitution pass such laws as may be necessary to carry this section into effect." That would mean, of course, that they would provide for the appointing power for the vacancies that occur now and are now filled by the judges.

The CHAIRMAN. It might be provided that the courts continue the exercise of this power until the legislature has legislated. I am thinking about the hiatus when the Constitution is adopted, when there is no legislation on the subject.

Mr. GORDON. Mr. Chairman: I was about to suggest this: "The general assembly shall pass such legislation to carry this proviso into effect and transfer the appointing power now vested in the courts, which courts shall exercise such powers until such legislation is enacted."

Mr. CARSON. Mr. Chairman: Do I understand Judge Gordon to indicate that his construction of this draft which we have before us is that you might treat it, "shall hereafter be imposed on the supreme court?"

Mr. GORDON. Yes, sir.

Mr. CARSON. As if the word "hereafter" was there?

Mr. GORDON. Yes, sir.

Mr. CARSON. Then you leave the existing conditions unchanged until the legislature sees fit to change it.

Mr. GORDON. Exactly.

Mr. CARSON. But you prohibit the imposing of any additional burden upon the court.

Mr. GORDON. Correct.

Mr. CARSON. I think that embodies the whole thought.

The CHAIRMAN. It seems to the Chair that that would take care of the situation that is threatening, as Judge Gordon now proposes to amend it. Until the legislature acts the courts would continue to exercise the powers that are now vested in them.

Mr. REED. Mr. Chairman: I do not understand the latter part of that section to mean in effect, "nor shall any of the justices or judges exercise any power of appointment except as herein provided." The first part of it is probably in the—

Mr. CARSON. These words ought to come out, Judge Reed.

Mr. REED. If you take this out and insert the words "hereafter no duties except such as relate to the organization and operation of the court shall be imposed," then you will have what you want.

Mr. CUYLER. May I inquire the parliamentary situation now? What is before us?

The CHAIRMAN. Mr. Pepper has drafted an amendment, and

we are waiting to see what the amendment is in its final form. The Chair does not know just what the final form of the amendment to be submitted is.

Mr. PEPPER. Mr. Chairman: After conference with some of the members of the commission I have made a draft here which among other things embodies the important suggestion made by Judge Gordon: "No duties except such as are judicial or relate to the organization and operation of the courts shall hereafter be imposed upon any court or judge. The general assembly shall enact such legislation as is necessary to transfer the appointing power now vested in the courts or judges, and after such transfer no court or judge shall exercise any power of appointment except as herein provided."

Mr. THORPE. Mr. Chairman: I second the substitute.

On the question.

Will the Committee adopt the substitute?

The CHAIRMAN. In order to clear the situation, Mr. Pepper's substitute will be considered as a substitute for all pending motions and for the report of the committee.

Mr. ENGLISH. Mr. Chairman: The effect of the pending substitute, as I understand it, is to take from the judges throughout the state all non-judicial appointing power. The principle involved, as has been stated by other members upon the floor, is so unassailable that if the effect of it were not to tear up by the roots the existing system, or if there were a popular demand for it in the country districts, and I refer now to the country districts only, of course, there could be no objection to the adoption of the substitute. I very greatly fear that in many of the districts the people may find themselves very much in a situation which would be presented in the city of Erie by this proposed substitute. Since 1857 the water supply of the city of Erie has been absolutely controlled by a board of three commissioners who have been appointed since that time, sir, by the court of common pleas. We have threshed out in various municipal elections the principle involved in that method of appointment, and invariably the people have endorsed it. They prefer it to turning over to the municipality the control of the water supply and the appointment of the commissioners by the city council. So very keenly do the people feel on that question, that I am very sure that when the Constitution, in whatever form we may finally leave it, is submitted for approval or disapproval to the city of Erie, the issue of all other sections of the Constitution is apt to be lost sight of in the single question as to whether the particular voter is or is not in favor of continuing the present method of appointing the commissioners of the water supply of the city of Erie. I only speak of that because there may be various other municipalities and counties in the state where there are special commissions created by special acts of the general assembly, the appointing of which has been vested in the courts. If that is so I can understand how we will by this resolution, unassailable as the principle is, make for the Constitution a very considerable body of opposition among the voters. Now, if there were any demand for this change in the country districts I would be for it on account of the principle involved, but I deny that there is such a demand, at least I do not know that there is such a demand, and

none has been referred to here. It may be in Philadelphia county and in Allegheny county there is a demand for the incorporation of this principle into the Constitution, but I deny that there is any such demand in the other localities, and I can see, on the other hand, that by placing it in the Constitution and taking away this appointing power, which in many instances has grown up and been approved by the people, it may be a very injurious thing in the Constitution when it is submitted to the people.

Mr. REED. Mr. Chairman: I do not like to let this discussion end with any idea that there is a demand in Allegheny county for it or a criticism by the people of the action of our courts. If there is a demand it comes from the judges themselves to be relieved from the annoyance of these appointments. It is not that there has been a popular outcry; it is because we feel that it is wrong in principle. I for one believe that when it is submitted to the people they will see that the principle is correct, and we will not have the trouble that Mr. English thinks.

On the question recurring,

Will the Committee adopt the substitute?

It was adopted.

ARTICLE V, SECTION 11.

The CHAIRMAN. Under the order of business that was adopted this morning, the next subject to come before the Committee is the substitute offered by the Chair for the report of committee No. 2 as to section 11. The Chair has redrafted this substitute in some respects and has taken out some incongruities. It will be read by the Secretary. Copies of the new draft will be handed to the members.

The Secretary read the substitute as follows:

Section 11. For the better administration of justice each county of this commonwealth, except Philadelphia county, shall be divided by the court of common pleas of the judicial district in which such county or counties may be into districts to be known as justices of the peace districts. A borough, town or township may constitute a separate district, may be divided or may be joined with one or more other boroughs, towns or townships, as the court shall see fit. Each city, other than the city of Philadelphia, shall, separately or joined with one or more boroughs or townships, or both, constitute a separate district, and shall be entitled to at least one justice of the peace. Cities containing a population of four hundred thousand or less shall be divided into convenient districts for each fifty thousand inhabitants; cities containing a population of more than four hundred thousand shall be divided into convenient districts for each one hundred thousand inhabitants.

The Governor shall commission one person as justice of the peace for each district herein provided for, to serve for a term of six years if he shall so long behave himself well. Any such justice shall be removed for cause by the Governor on his own initiative and after hearing, or for cause duly found by the proper court of common pleas after public hearing and certified by said court to the Governor. Any vacancy in the office of justice of the peace shall be filled by the Governor.

No person shall be eligible for appointment who has not resided within the territory comprised in the respective district for a period of two years prior thereto. No person who is not learned in the law shall be appointed as justice of the peace in any district containing a city. Every justice of the peace shall reside in the district for which he is appointed during his term of office.

For all services rendered in any judicial proceedings justices of the peace shall receive a salary which shall be in lieu of all other compensation, and which shall be fixed by law and paid by the proper county. All fees received for any such services shall be paid into the county treasury for the use of the county.

The jurisdiction and powers of the justices of the peace hereinbefore provided for shall be the same as now conferred upon and exercised by justices of the peace, and such as may hereafter be conferred by law.

All justices of the peace and aldermen now in office shall serve out their unexpired terms, after which time the office of justice of the peace and alderman, as it existed immediately prior to the adoption of this provision, is hereby abolished.

The general assembly shall at its next session after the adoption of this Constitution enact such laws as may be necessary to carry this section into effect.

On the question,

Will the Committee adopt the substitute?

JUSTICES OF THE PEACE.

Mr. REED. Mr. Chairman: Having just adopted an amendment to take away all the non-judicial powers from the court, we are now going to instruct the court to divide the cities and townships into districts, so that the Governor can appoint justices of the peace. That is not very consistent.

The CHAIRMAN. It seems to me that is a judicial duty. The court shall divide the election districts and wards.

Mr. REED. Mr. Chairman: I do not see it.

The CHAIRMAN. It does not say that dogmatically.

Mr. REED. I do not think that is a judicial duty, but it is all right. I would like to ask the Chairman how many thousand appointments of that kind there will be in the state added to the Governor's patronage.

The CHAIRMAN. The Chair can scarcely answer that question except in this way. In talking it over with a number of lawyers from the different counties in the state the prevailing opinion seemed to be, from the largest county to the smallest, leaving out of consideration Allegheny county, that the number of districts in no county would exceed six. Therefore the number of appointments made by the Governor would not be greater than something less than four hundred in lieu of the thousands of justices of the peace that now exist. We took the largest county territorially in the state and the smallest; I happen to live in one of the smallest territorially, and we went over a number of them with lawyers from different districts.

Mr. REED. This morning the proposer of this resolution or amendment was willing to concede that the city of Pittsburgh might have one justice of the peace for each fifty thousand.

The CHAIRMAN. I myself have no objection to that.

Mr. REED. Mr. Chairman: I hope that has not been overlooked.

The CHAIRMAN. The figures there are not dogmatic, but follow the amendment of the committee. I have no objection to make it fifty thousand instead of one hundred thousand. If you will offer that as an amendment I will accept it.

Mr. REED. Mr. Chairman: I will offer that as an amendment.

The CHAIRMAN. Then the amendment will read: "Cities containing a population of more than four hundred thousand will be divided into convenient districts for each fifty thousand inhabitants." That will accomplish that, will it not, Judge Reed?

Mr. REED. Yes, sir.

The CHAIRMAN. Then that is considered as part of the substitute.

Mr. REED. Because I think there is business enough there for one justice of the peace to each fifty thousand inhabitants.

The CHAIRMAN. I have no objection about the figures.

Mr. CARSON. Mr. Chairman: May I ask you, as to this amendment, or rather substitution for the report of the committee, for in-

formation? The committee had provided for the election in townships and boroughs and cities, by the qualified electors thereof, of a limited number of justices of the peace, and so forth, and by your amendment, as I contrast it with what had been presented by the committee, I perceive that the radical distinction is the substitution of an appointment by the Governor for popular election. Am I correct in that?

The CHAIRMAN. You are correct in that; and also the creation of justice of the peace districts instead of making justices of the peace appointive for the districts as they now exist—

Mr. CARSON. You are cutting down thousands of justices of the peace whose commissions have to be signed by the Governor to a limited number, and also prescribing the qualifications in certain cities or districts of a certain class that they have to be learned in the law. Now, may I go further and ask for information as to why you put that duty on the Governor of selecting justices of the peace to serve a community and take it away from popular election by the people of these districts?

The CHAIRMAN. I might say possibly as an experiment with the idea, if I am to answer Mr. Carson's question, that it would meet with popular approval to do it because the people would confess, as I confess myself, that we have fallen down in the ability of selecting the right kind of men to administer the all-important office of justice of the peace.

Mr. KELLY. Mr. Chairman: I think the people have fallen down in the matter of electing justices of the peace because we have so many of them that they have been considered largely of no account.

The CHAIRMAN. That is what I mean.

Mr. KELLY. More or less of a joke to run for justice of the peace cut in some townships, in some parts of the state, in some of the boroughs, but it seems to me that it is a rather remarkable proposition that we have an elective judiciary. In other words, the people elect the justices of the supreme court, the judges of the superior court, the judges of the orphans' court and common pleas court, and I believe even the municipal judges in Philadelphia, and to then make the lowest judicial office, the judicial office which comes the closest to the so-called common people, an appointive office, it seems to me is rather inconsistent. The Governor, of course, would not select these justices of the peace, I mean he, the Governor, could not himself select them. He would not have that knowledge and acquaintance which would enable him to make an intelligent selection, and perhaps a selection would be made by the political leaders of the different communities where these officers were to be appointed. I do not mean that that might not be a good selection, but it seems to me that the principle of the matter is wrong. These justices of the peace, or these inferior tribunals, whatever they might be called, are really the most important to the largest number of people. It is not uncommon for a poor man, the laboring man, if you please, an obscure man or woman to have some little petty trouble which is purely local. It may be over a line fence, it may be over the chickens of the neighbor going through the yard and digging up the seed that has been planted, a variety of things arise, but they are small and petty claims which result in more or less litigation. Those cases always come be-

fore these inferior tribunals, at least in the first instance. Now the plan that is suggested by the Chairman's amendment or under the plan suggested by the committee, under either plan I think the standard of these so-called inferior judiciary offices is going to be very much raised.

No longer will the office of justice of the peace be a joke and the office either under your plan, sir, or the plan suggested by the committee will provide for a very respectable public office which a man of good sense, responsibility and character might well be glad to fill. That being so it seems to me that it would be a dangerous thing and an unsound thing to make this office appointive, if there is any merit in the so-called non-partisan election law, as far as the election of judges is concerned. It applies to the election of judges in judicial districts. I think most everybody will agree that it has not worked particularly well in the matter of the election of judges who run throughout the state. We have been fortunate perhaps that under that system we have good judges in the appellate court, but the system is very unsatisfactory, and so much so that many thinking men have seriously advocated going back to the old partisan system of electing judges of the supreme and the superior courts. But when it comes to the election of a judge in the judicial district in the county, ordinarily which constitutes a judicial district, I think the consensus of opinion is that the so-called non-partisan election law has been a success and has been beneficial. The people know whom they are electing, they know something about the candidate, and they know something about his qualifications. Now you are asking the Governor, who officially lives in Harrisburg, wherever he may live as a private citizen, to select in all corners of the state rather important judiciary officers, which function he can only perform upon the recommendations of those to whom he listens from the respective communities in which these appointments are to be made. A bad appointment, the appointment of a bad officer, one who might be arrogant in the discharge of his duties, who might be indolent in the discharge of his duties, would have a very bad effect, and if there is no responsibility to the neighbors, as they might be called, of a particular electorate in which this judicial officer lives, it seems to me that it is at least very doubtful whether the situation would be very much improved. Personally I do not care whether the general scheme as advanced by the Chairman's amendment is adopted or the one suggested by the committee, because I do not think the committee has any pride of opinion in either.

The CHAIRMAN. I am sure the Chair has not.

Mr. KELLY. Mr. Chairman: I am sure the Chair has not, but it is only a question of doing the best we can in a matter that we all recognize as more or less of an evil. What we had in mind, and speaking a word again for the report of the committee, was that a general scheme such as outlined in the Chairman's amendment or substitution, with the one exception of its being an appointive office instead of an elective office, could be introduced, could be inaugurated by the legislature of the state. In other words, we are leaving the door so wide open in the provisions that we have recommended, the committee I mean, that every part of this proposition which the Chairman has submitted could be adopted by the legislature and

enacted into a law with, as I said, the one exception of the office being appointive instead of elective. I do not know, I simply want to say it seems to me it is a rather dangerous thing, certainly a great innovation, to make the office of justice of the peace selective; the one office that comes the closest to the electors, the electors in a given borough or township. They are more immediately concerned with the matter of who shall be elected justice of the peace than they are as to who shall be elected judge of the supreme court or superior court.

Mr. THORPE. Mr. Chairman: There are two matters in this report which suggest themselves as a proper matter of inquiry. First, in the resolution already approved, it is said that judges learned in the law shall receive compensation paid by the state would refer to this group that is proposed in the amendment; secondly whether—

The CHAIRMAN. They are not to be considered as included in that group.

Mr. THORPE. Mr. Chairman: Not to be considered as included in that group?

The CHAIRMAN. Except in Philadelphia, and that would have to be provided for. I think that provides for itself in Philadelphia. In the amendment these are justices of the peace and not judges, if I may answer the question.

Mr. THORPE. Mr. Chairman: The second question that is likely to be asked is whether or not justices of the peace or whatever title they are known by are required to be learned in the law. I raise the query whether it would not be a difficult matter in a township to secure men learned in the law as candidates for the office of justice of the peace.

The CHAIRMAN. May the Chair again inform Dr. Thorpe that in the townships they would not be required to be learned in the law. That only applies where they are appointed in the cities, and the districts where there are cities.

Mr. THORPE. Mr. Chairman: That is perfectly plain.

The CHAIRMAN. I may say, in answer to Judge Kelly, that the Chair was in doubt himself as to whether they ought to be elected or appointed. What I had in mind, if I may offer a thought, regardless of what the idea of the Commission was on the broad question as to whether they ought to be elected or appointed, my thought was that the creation of these districts would so gradually reduce the number that the office would again assume the dignity that it is intended to possess under our system of law. I have no pride of opinion in it at all, and no fixed thought on the question as to whether they should be elected or appointed, save as I have thought if the question is submitted as to whether the entire judiciary should be appointed or elective, I think my mind would favor the appointment of the judiciary.

Mr. KELLY. Mr. Chairman: I would begin at the other end, sir, and appoint judges of the supreme court.

The CHAIRMAN. I think there is something in that.

Mr. PEPPER. Mr. Chairman: In the opening sentence of the section there is a provision to which Judge Reed called attention a few moments ago, to the effect that the revision of the territory is to be made by the court of common pleas of the judicial districts, and so forth, and at the end of the section there is a comprehensive

provision that the general assembly shall at its next session after the adoption of this Constitution enact such laws as may be necessary to carry this section into effect. Would it agree with the views of the Chair if we were to omit the words "by the court of common pleas of the judicial district in which said county or counties may be," so that the section would read, "for the better administration of justice, each county of this commonwealth, except Philadelphia county, shall be divided into districts to be known as justice of the peace districts?" Then the general assembly, in enacting the legislation necessary to carry this into effect, may make provision for the way in which the districts are to be created. It seems to me there is the difficulty suggested by Judge Reed that we are placing a new non-judicial duty upon the courts of common pleas when we call upon them to create boundary lines or subdivisions in the municipalities of the commonwealth for political purposes.

The CHAIRMAN. The only reason I put it in was because they do that now. They do not do it in Philadelphia, but we are continually having changes of boundaries in the townships or counties or wards or election districts, and so on, which we have already assumed to be a judicial duty. I have no objection to the suggestion of Mr. Pepper if he thinks that harmonizes with our previous action.

Mr. PEPPER. Mr. Chairman: If that suggestion would prevail, then it would read as I just read: "For the better administration of justice, each county of this commonwealth, except Philadelphia county, shall be divided into districts to be known as justice of the peace districts." That seems to conform to good constitutional practice, leaving the details for the general assembly.

The CHAIRMAN. I have no objection to that.

Mr. PEPPER. Mr. Chairman: May I add a word of indorsement to what has been said in favor of the appointive system in the case of these judicial officers whose case is under consideration? It seems to me that the decision that we reached was reached almost solely with reference to the dignity and the standing which these tribunals are likely to have in the eyes of the people with whose lives they will come into intimate contact. I am more and more convinced that the educational processes that are described under the terms of "Americanization" and the like depend for their efficacy more than upon any other single factor on the impression made upon the masses of our people by the way in which justice is administered. I think that especially with those who speak our language imperfectly or not at all the impression for good or for ill made by our institutions is the impression made by the courts, and especially the courts of subordinate jurisdiction. For one, I feel almost more concerned than about anything else in our system that the courts with which the poor man and the foreign-born citizen come into intimate contact shall be dignified tribunals with an orderly procedure and conduct, altogether upon a different plan from that which characterizes the magistrates' courts in the large cities at the present time. That being so, it seems to me that we are more likely to succeed in attaching dignity and standing to these tribunals if the justices who sit in them sit under the appointment of the Governor of the commonwealth and hold their commissions directly from him. There is no doubt about it, as it seems to me, that everything which tends to relate the individual citizen to the central

authorities creates in the mind of the citizen that kind of state loyalty which is next best to the loyalty which he owes to the national government. There is a dignity and prestige attending someone who sits under a commission or appointment from the Governor of the commonwealth. It will be likely to differentiate him and his tribunal in the eyes of the people of the locality in such a way as to tend to give dignity and standing to his office and to his jurisdiction. I can see the force of the suggestion that the experiment in an appointive judiciary might with advantage begin at the other end of the line, and yet for myself I am more concerned about seeing the experiment tried from the bottom up than from the top down; and I believe that we have a chance here to try an experiment in appointive judiciary in a field where it is of enormous importance that we should invest the judiciary with all the dignity, with all the prestige that it is possible to invest the judges with. I think these men will have that quality if they sit under the Governor's appointment, and as these terms expire at different times, the responsibility of filling this great number of offices will not devolve upon any one Governor. He will not be called upon to perform the extremely difficult task of making all these appointments, except perhaps the first time. The terms will expire at different periods, and it seems to me that in that way it will be found a practical possibility for him to exercise the same care in making his appointments of these judicial officers that he now uses when he makes appointment of judges of the common pleas and other courts to fill unexpired terms. I hope that the resolution in the form proposed by the Chairman will prevail.

Mr. VOLLE. Mr. Chairman: It seems to me we are placing a provision in the Constitution, should we adopt the substitute or the amendment of the Chair, that is leading towards the short ballot. The judiciary is a very sensitive body so far as the people are concerned, that is they are least sensitive about it. We know that in the framing of the Federal Constitution there was quite a dispute over the appointment even of Federal judges, and it was finally compromised that Federal judges could be appointed. The people have very jealously guarded their rights to elect members of the judiciary. Now, it has been said here by Judge Kelly that we take the lower courts, the courts of the people, and we decide to make the judge there an appointive officer. It seems to me that if we want to defeat the Constitution or the work that is being done here by this Commission, that would be the best way to do it, unless we submit the amendment and the sections of the Constitution to the people seriatim and not as an entire Constitution. Democracy comes from below, it does not come from above, and although we may agree here that the Governor may pick out better men than the people can elect, however, the people want to exercise their right of franchise in their selecting a man for judge and selecting him whenever they wish, and rejecting him whenever they feel that he does not serve them as he should. It is true, what Mr. Pepper has said relative to Americanization, but these are the stumbling blocks in democracy that we have been going over for one hundred and forty years, and to change this judicial system now in any way to an appointive one, after we have had the elective in operation for so many years and have stumbled over the clods and the rough places, seems to me to be flying in the face of the

people, especially when there is a tendency to broaden the right of the people everywhere, and democracy everywhere, instead of restricting it.

The CHAIRMAN. My own thought in making this office appointive, living as I do in an industrial community, among people who work very largely with their hands, was that those people would prefer one strong man as judge for their petty disputes rather than the men who are now in office.

Mr. GORDON. Mr. Chairman: On the whole I sympathize with the principle announced by Mr. Voll, and I would not change the elective judiciary to an appointive one, but I do not believe that the principle is much involved in this amendment and for this reason; these officers called justices of the peace are not only removable by the Governor for cause, but are removable by the court of common pleas after hearing or for cause shown. That is a sort of constant impending recall of the minor judiciary, and ought to satisfy, it seems to me, the democratic principle. Therefore, while the doctrine which Mr. Voll has asserted is a good one and commends itself to me, I do not believe any technical violation of it, or seeming violation of it, in the proposed amendment of the Constitution is of much consequence when the officer himself is constantly amenable to the people, upon complaints, upon charges, removable upon a substantiation of those complaints. The real objection it seems to me, if there is any, to this provision is the vast patronage which it gives the Governor, and on that subject I think we should consider it well. I am told by the Chair in private conversation that there are about six thousand justices of the peace in Pennsylvania. Six thousand justices of the peace, an enormous number, it seems to me, to transact in this day and generation the necessities of the people in the courts of first instance. Six thousand justices of the peace! That has arisen because of the division of the state into districts and also the existence of aldermen in wards in cities. It is not upon any scientific basis and is not at all upon the basis of population. There exist the justices of the peace in townships where there are not two hundred people residing, and who have nothing to do except occasionally to draw a will maybe, or perform some other function that is not that of a justice of the peace. Undoubtedly the existing system for the election of these justices of the peace is improper. But how many does this bill give to the appointing power of the executive? The Chairman has said that it will be less than four hundred. Less than four hundred, not taking in the cities, not taking in the two larger cities; but if the power is given in those cities I presume we may safely say it will exceed four hundred and may reach five hundred. Is that too large a power to give to the executive? The appointment of five hundred justices of the peace with the attendant salary and the attendant local power and prominence? Well, now, the first objection that I may make to this amendment, and I may say in parentheses that I am in favor of it, the first objection that I would make if I were criticising it would be this, that by making this an appointive office it will result in justices of the peace in many localities being appointed who are of different political faith than the majority of those districts. It would be well if we could eliminate the political matter altogether from the administration of justice in all its details higher and lower; nevertheless if this is to be given to the Governor, and Governors

would be no more angelic than the past ones, I presume most of the appointments would be of the political faith of the Governor, and in that case I can conceive of some districts in this state divided according to this amendment in which we will say the appointment by the Democratic Governor of a Democratic justice of the peace will raise a riot or worse, and the converse of it is true. That exists on the face of this. Now, Judge Kelly thought and Mr. Voll said, these justices of the peace come very near to the people. They have to do with their liberty in a very close degree; they issue warrants for their arrest very often, commit them to jail, fix the amount of bail, hear all landlord and tenant cases, and all claims for trespass by a dog, killing of a sheep, and innumerable things come under their jurisdiction. Sometimes they marry people. They have not yet the power of divorcing them, or it would be a very popular office, but they come very close to the people. I can see that there might exist a good deal of irritation in the appointment in some districts by a political Governor of a politician to exercise these important functions who was not of the same faith of the large preponderance of the people of that district. That is the first objection I will point out. The next objection is the uncertainty as to whether all these justices ought to be appointed at one time and all their terms expire at one time, so that the Governor would appoint the entire minor judiciary at once or not. In order to prevent that sort of thing, and in order, if possible, to have the offices filled in from time to time where death which is certain and resignations which are infrequent occur, I propose the following amendment to the last sentence of the second paragraph of the bill. Insert the word "when" before "any;" insert the word "occurs" after the word "vacancy;" strike out the words "shall be filled by" and insert after the word "Governor" the words "shall appoint a successor for a full term," so that the sentence will then read, "When any vacancy occurs in the office of justice of the peace, the Governor shall appoint a successor for a full term." That would result by—

The CHAIRMAN. I think that is a very wise suggestion. It did not occur to me, but I think it is a very wise thing to do.

Mr. GORDON. Mr. Chairman: Then I need not say anything further in its defense. I would suggest also this change, it is merely technical and verbal, in the same section, section 2; instead of "Any such justice shall be removed for cause by the Governor," I think if you view the whole, the word should be "may," "Any such justice may be removed for cause by the Governor on his own initiative and after hearing." I do not know what the word "hearing" means there, unless it means that the person who is to be removed shall receive notice of the cause against him and may answer if he pleases, but if that is so, then it seems to me that the word ought certainly to be "may."

The CHAIRMAN. There is no question about that. I will accept it.

Mr. GORDON. Mr. Chairman: Again it does not appear by this proposed amendment whether all of these justices would be appointed at once by the Governor and the existing justices and aldermen continue in office until their terms expire or not. The only provision on the subject, I am indebted to Mr. Pepper for the value of this criticism, next to the last paragraph, "All justices of the peace and aldermen now in office shall serve out their unexpired term, after

which time the offices of justice of the peace and of alderman, as it existed immediately prior to the adoption of this provision, is hereby abolished." That undoubtedly provides for the continuance in office of all aldermen and justices of the peace now in office. The provision as to appointment after providing for the creation of the district is "the Governor shall commission one person as justice of the peace for each district herein provided for."

The CHAIRMAN. The intent was that the appointment should be made at once.

Mr. GORDON. Mr. Chairman: At once?

The CHAIRMAN. Yes, sir; that is the intent. If it was not made clear, it ought to be made clear, because otherwise it would take years and years to put the system into effect.

Mr. GORDON. Mr. Chairman: All right.

The CHAIRMAN. My thought was that a great many of the present justices of the peace would resign their office and their business would dry up if an efficient justice of the peace were appointed for the district.

Mr. GORDON. Mr. Chairman: Since the ballot law providing for a non-partisan ballot has come into existence, and applies to all judges except those who are appointed, I presume we may regard the minor judiciary as the proper subject for the application of this non-partisan principle. Therefore, if this amendment should pass the Governor would be vested with the power to appoint over four hundred judges, many of them learned in the law, and who would receive I presume, since their dignity is to be considered in this matter, a salary sufficient to maintain that dignity. It is to be hoped that the Governor will remember the non-partisan feature of the elective judiciary, and he will have his independence and his high sense of principle put to a severe test in that respect. If he should not, I presume this amendment will become unpopular, if it should be adopted by the people. If he should not, what would be the abuses that might occur under it? Well, there might be many. I think the danger of appointing improper judicial officers lessens as we go up. I think under the power of appointing judges in the past it was not the higher judges who were open to criticism, but it was among the rather minor judges. I think in that respect that great power and great responsibility sobers the appointing power and that the supreme court judge, when he comes to be appointed, is likely to receive more serious treatment by the appointing power than a minor judge. I believe that is so as to judges of courts of record; but what will be the effect when you come to appointing judges who are justices of the peace, and when a Governor has five hundred, more or less, to appoint, will he give those appointments serious and careful consideration and select only those who are fully qualified by attainment and character for the post, who are known to their neighbors, and who personally are acceptable in that community of thirty or fifty thousand over whom they will preside, and for whom they will administer intimate but very important justice? Well, I hope so. I do not know what will be the effect. It is an experiment. I think it is worth the experiment, and I think that the experiment had better begin down there; better begin down there because it will dislocate things less down there than it would up above; down there because if it is a failure the legislature will be very prompt to submit consti-

tutional amendments, and also because I suppose under some provision of this Constitution there might be other courts established to take over the administration of these particular justices if they become offensive; but anyhow it is a risk in any case. Under the elective system we have already established six thousand officers, more than half of whom are unnecessary, and I am obliged to say from my experience most of them are the politicians of their neighborhood. I think, therefore, it will be a refreshing thing to try in this commonwealth an experiment of appointing four or five hundred justices of the peace, giving them the jurisdiction which the provision gives them, with the term and with the emoluments, which emoluments will not be dependent upon their fees obtained from suitors, but will be paid as a fixed sum by the county.

Mr. VOLL. Mr. Chairman: I should like to make a substitute by striking out of the second paragraph in the first line, "the Governor shall commission one person" and insert "there shall be elected one justice of the peace for each district," and then as it reads on down.

The CHAIRMAN. So that that provision for election shall run all through the amendment?

Mr. VOLL. Mr. Chairman: Yes, sir. Just one word further. I realize my inability to in any way cope with Judge Gordon or any of these other gentlemen learned in the law. I have listened very attentively to what the Judge just said. It seems to me that the abuse he pointed out that might occur in the appointing power even from the Governor is sufficient to keep this office an elective one and not to try the experiment of appointing. It further seems to me that the proper course to pursue would be to try to raise the standard of the courts if possible. I believe the raising of the number of the population from what it is now to fifty or one hundred thousand will have a tendency to raise the standard of these courts. Moreover, the procedure seems to me, not being a lawyer, and not knowing anything about law, could be so changed as to give it a higher standard than it has at the present time; that the people themselves would select men who are competent and fit to preside over those courts.

Mr. PEPPER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. CARSON. Mr. Chairman: I confess that the last hour of debate has left me in a state of bewilderment. I feel somewhat confused, although there is no uncertainty in my mind as to which of these two measures I would prefer. I have been bewildered in the sense of not being able to understand a change of the point of view on the part of those whom I would naturally suppose to be on the other side of the proposition. I read a book last night before going to bed on mesmerism, and was looking for some practical illustration of it, and I have come to the conclusion that the proximity of Mr. Pepper's desk to Judge Gordon's has mesmerized Judge Gordon completely. I should have expected that he would with all his power antagonize this proposition to take away from the people at large the right to elect their minor judges and lodge it in the hands of the Governor, not only in the way of cutting down the enormous number of justices of the peace which exist in the commonwealth, but also in re

moving to a distance from the body of the people, who would appeal to them for relief, the magistrates who would decide; and I confess, too, as we are speaking here very frankly, that I am equally surprised at your own attitude in the matter, that you should prefer the appointive system as to the minor judiciary to the elective one. Now, I cannot help but feel that this is a matter that we should consider very carefully. Judge Kelly, who comes from that portion of the state which, in the judgment of his fellow-committeemen, makes him the better interpreter of the probable wishes of the people than one residing in the larger city as myself, was entrusted with a study of this situation and preparation very largely of the committee's report. Judge Kelly has expressed with a great deal of force the exact situation. There is no exaggeration in Judge Gordon's statement, quoting from yourself, I think with regard to the number of justices in the commonwealth of Pennsylvania, running up towards six thousand. I know that when I was in your position that we had at least fifty-five hundred to deal with. I know that from the number of commissions that the Governor had to sign in his office. Now, that is an appalling number, an unnecessary number, an unreasonable number; but a proper restriction in that number can be gained by the adoption of the committee's report by checking the territory within which this indiscreet exercise of power can be had by the increase in the jurisdiction of these justices, and by a provision that in certain cities of a definite class they shall be learned in the law, which does not make it impossible to obtain men fit for that position. You can correct that evil; but, after all, what is a court of justice? What is the purpose which society seeks to obtain by substituting courts for the old methods of force and violence which were the means by which quarrels were determined between savages in the early days of the Saxons, when the blood-feud was in vogue? A family could be arrayed against a family in order to redress some grievance which some member of that family had inflicted on another, and disorderly scenes of bloodshed and of terror spread all over the community. It was only gradually that a notion of a court, some tribunal in whom the contending parties had confidence, was substituted for physical force. Now, in this state, I recall years ago reading with a great deal of interest, and I have not refreshed my recollection, I only wish I had, of the debate which took place in the convention of 1851 when the elective system was substituted with regard to the judiciary for the old appointment system. I recollect there was an argument made by John Sergeant, then in competition with Mr. Binney for the leadership of the Philadelphia bar. He was candidate for Vice-President on the ticket when Henry Clay was candidate for President of the United States. He made a wonderful speech for the Missouri Compromise, and was a statesman in the most commanding position. He contended, and he contended in vain, against a change in the system from appointive to elective. Chief Justice Gibson was then upon the bench, and if there ever was a judge who commanded the confidence of the Governor who chose him for the place, it would be that judge. Yet neither his knowledge, his information nor his experience, nor that of his colleagues, could stem the tide which then set in, that, while the judiciary should be an independent body, yet at the same time it should in some way represent a control of affairs to which the people had assented. It was the idea of arbitration, and if the peo-

ple wished to arbitrate their differences, they wanted some hand in the selection of the arbitrators. They did not want the judges imposed upon them against their consent. Now, it is the same way with the selection of a court. I do not mean that suitors should pick their judges in any way, for we have fixed the jurisdiction in such a manner that certain courts are charged with the jurisdiction over certain matters, over certain sums of money, and there is a limit put to that. Then there are certain classes of cases which are properly assigned, because of the technicality of the subject, to one set of judges, just as we have patent courts, and admiralty courts, which the ordinary man knows nothing about. But when you come down to the body of the common people, those who feel a wrong over a few dollars in amount, which may be a paltry sum in the eyes of a neighbor, but to them is everything, they wish to apply to some minor court in which they have confidence because it represents their choice of an arbitration. Very well. I well understand that the administration of justice through ordinary justices, such as they are, is a shameful blot on our civilization, because it is ignorantly administered. I will not say corruptly, except that human nature is never free from corruption, and perhaps some justices sell their justice. It is ignorantly administered. It is unnecessarily diluted by the number. Ours is an effort to lift the office up in some way to a position of dignity, but the men should not be lifted so high as to be placed upon a pedestal, far beyond the reach of the suitor. The justice of the peace must not become so extraordinarily dignified and imposing in aspect as to suggest, as I gather from the thought that is going through your minds, that among those foreigners who are in the shipyards of your own locality, and crowding your streets to an excessive degree, that the only person they will respect in the way of a judge is someone invested, so to speak, with the trappings of the royalty which they have abandoned. They are in America, in the presence of an American judge. They are asked to become converts to the theory of democracy, and if we reverse this whole history of progress of democratic growth since 1851, and begin away down at the bottom, with the people's courts, and say to the people you cannot elect your minor judges, you may elect those who sit in the higher courts and only seven in number, who pronounce their final and irrevocable decrees, you may elect your superior court judges, whose jurisdiction is fixed at fifteen hundred dollars, which is far beyond your own contentions, but when it comes down to the courts that are to be in daily contact with yourselves, you shall have no voice in their selection, it seems to subject the tribunal at once to hostility on the part of the litigants towards the courts. Now, one of the objects of the administration of justice is to satisfy the party litigant. It is not merely to settle the dispute. A man armed with sufficient power may settle a dispute and say that is settled and you have got to submit, but that is not the administration of justice. The administration of justice must consist in an open court, not in camera, free from influence, ample opportunity to the injured to state his cause, ample opportunity on the part of the defendant to state his cause, patience in listening to the discussion, and then a decision which will be acquiesced in. Why? Because it is considered to come from the lips of one who has been chosen either directly, the-

oretically, or partially by the submission on the part of the litigant himself to the choice of that man as umpire. Now, it seems to me we are departing from that idea entirely by taking these people's courts away from the people. We have made an effort, an honest effort, to try to limit the number, to try to dignify the position by the selection of better people than they had before; not to go to the other extreme and make the administration of justice a thing remote from daily life and the magistrate himself, one appointed by a person who himself necessarily must be far removed from personal knowledge of the fitness of the candidate or the particular locality in which he is to exercise his power. Now, by limiting the election of these justices to the district, you put it on the people themselves, and if anything goes wrong with the administration of justice you say you are responsible for it; but if anything goes wrong and the Governor is responsible for it, a certain amount of odium and weight of responsibility would be attached to him, particularly as the number is so large. It seems to me to burden him with an unnecessary and impracticable responsibility. I, therefore, am opposed to the amendment, and I much prefer the draft of the committee's report which Judge Kelly has prepared.

Mr. ALTER. Mr. Chairman: I am in favor of the amendment which has been drafted by Mr. Voll. I feel certain that the people will not respond favorably to the suggestion of making these justices appointive by the Governor. I suppose it is a sound principle that in selecting public officers the selection ought to be made by those in a position to make the selection most capably. When it comes to selecting justices of the supreme court or judges of the superior court, whose jurisdiction is state-wide, there would not seem much doubt but that the Governor could make that selection more capably than the great body of voters over the state, because if the lawyer is of sufficient prominence to be considered for one of those positions, then the probabilities are that the Governor will know him personally; but in any event the Governor will be able to get accurate first-hand information concerning his qualifications. On the other hand, the great body of voters over the state will have no opportunity to know the men who are proposed for the office of justice of the supreme court or judges of the superior court and will have no reliable method of obtaining first-hand information concerning their qualifications. When you come to the judges of the court of common pleas, something might be said on either side of the question, but when we come to a justice whose jurisdiction is confined to a neighborhood and whose duties are confined to the rendering of justice between neighbors, then we have to select from among candidates proposed for that office who in almost every case will be entirely unknown to the Governor, but thoroughly known to their neighbors who compose the community in which their duties are to be performed. And therefore it would seem clear that the voters of that community, the neighbors of the man proposed for the office, would be the most capable of making a wise selection. I do feel confident, Mr. Chairman, that the people of those communities will not be brought to consider favorably any suggestion to take that power of selection out of their hands and put it elsewhere.

Mr. FISHER. Mr. Chairman: We have two distinct proposals before the committee. The one submitted by the sub-committee which

involves an elective minor judiciary, the other submitted in the form of an amendment by the Chairman which involves the appointing system. Mr. Voll seeks to amend the proposal of the Chair by substituting an elective for an appointive system. It seems to me that if this amendment prevails that it will hardly fit into the scheme of that of the Chairman.

The CHAIRMAN. That fits in in every respect except one, and that is that there will have to be put in words providing that no district shall be divided. Then the election can proceed in the regular way. That ought to be done if Mr. Voll's amendment prevails; that ought to be inserted in the Chair's suggestion before it is adopted.

Mr. FISHER. Mr. Chairman: The other distinction between the two plans with reference to the extension of the jurisdiction, the original report of the committee as I take it comes a little closer to the people in that it recognizes the jurisdiction of the township as a separate district for a justice, whereas this scheme of the Chair provides for the organization of districts in a manner or by a method that may be devised by the legislature. Am I correct in that respect?

The CHAIRMAN. That is correct. In Mr. Pepper's suggestion, as it was originally drawn, the appointment would be by the court. Mr. Pepper's suggestion, as I take it, would be some method that the legislature would point out for the creation of a district.

Mr. FISHER. Mr. Chairman: The discussion has developed some rather peculiar situations. We have heretofore witnessed some of them—one, for instance, an affinity between Judge Reed and Mr. Pinchot. Now we have Judge Gordon championing the appointive power of the Governor in his selection of a minor judiciary; whereas the cause of democracy is championed by Mr. Carson and Mr. Alter. It is hard to tell just which system may produce the better results. Sometimes when we have an elective system we wish we had the other, and when we have appointive officers we wish that we had kept a string on them by making them elective. The whole purpose here should be, I think, to devise a minor judiciary which will yield the best results, which will give the people who are to be served in their daily life a forum where their minor difficulties can be heard and justice can be rendered with the least expense and the least trouble for those who are seeking it. The question is one which will receive the attention of the people very generally when the proposal is presented to them. Whatever our action may be, I for one shall welcome a wide discussion on the subject. I know that there is a great deal of criticism over the way in which justices today administer their offices. That condemnation ought not to be universal. I know in the country districts that there are many good men serving as justices of the peace. I know that they are administering their office in the spirit of justice and with purity of motive. On the other hand, in communities that have been filled up with a foreign population, due to the sudden development of some line of industry, there has been maladministration of justice by these minor officials. Sometimes it occurs that a conspiracy exists between a justice and other minor officials and agents operating through these districts for the purpose of corruptly administering the office. Many cases arise that ought not to be permitted, and are sent to the higher courts for trial, and sometimes conversely matters that should be sent to the higher court are quashed in their very inception. One is

led to question the integrity of the way in which many of these offices are administered. Now, I take it that if the office is made appointive, it will remove the person occupying the position from direct contact and from direct influence of the local communities. The thought is that they will therefore be more independent when it comes to the administration of justice. The thought that inspires Judge Kelly is that the office is one which particularly concerns the home life, the immediate affairs of the people within the jurisdiction, and that therefore they have a right to a voice in the selection of the person who shall administer the office. Now it is a question as to which theory we shall adopt. I for one, inasmuch as this report is merely tentative and will be submitted for general discussion, am willing to stand with the Chair¹ and with Judge Gordon in the submission of a proposal for an appointive office. We can then sound out public sentiment. My notion is that that proposal will draw forth discussion to a greater extent than the other. After hearing from the country, if you please, the committee can then reconsider this action. If it thinks it better to substitute an elective system **we can readily do it.**

Mr. CARSON. Do you want to put a blister on the public?

Mr. FISHER. That is exactly the thought, and we will get a wide expression of opinion on this subject. There is much discontent, there is no question about it, with the office of justice of the peace as at present administered.

Mr. PEPPER. Mr. Chairman: I think what Senator Fisher has just said deserves to have, as I am sure it will have, great weight with the Committee of the Whole. What we are anxious to accomplish, I take it, is so to present our tentative conclusion to the public as to elicit from the public, during the hearings that will shortly be held, an intelligent and interested response to our suggestions. If we mean to get from the community the kind of criticism and constructive suggestion that we want it is necessary that we should have the courage to present a view such as the one that is embodied in this resolution; a challenge, if you please, to the conventional notion respecting the way in which judicial officers should be chosen. We are not doing anything irrevocable in making such a proposal for public consideration, but we are doing something which will get a public reaction on a question that will be most informing and enlightening to all of us, who will then act in the light of it. I do not know of any subject upon which it is possible to talk in a more lofty strain than on the subject of elective as distinguished from appointive judiciary. I know of very few subjects of which it is more true the talk indulged in is removed from the practical considerations which after all should influence us as practical people in framing a statute for the government of the commonwealth. Nobody I suppose who advocates an appointive judiciary pictures the appointive judge as clothed in the habiliments of royalty. Nobody means to gain for him the kind of dignity or prestige that comes from an attempt to engraft monarchical authority upon a democratic system. The real question is whether or not the minor judiciary whose choice we are considering are going to become the object of great political solicitude and political activity in the district for which they are to be chosen. There is a sobering effect that is produced upon political parties by the dignity of the office to which candidates are to be elected. In

the case of an old-established office the sobering effect of the tradition has much to do with choice of candidates and their election to the vacancy, but here we have a new office. There will be no traditions behind it. It has untold possibilities, let us say, in the way of local political influence and power. There is patronage, there is an ample salary, there is no sobering tradition to determine the popular choice of persons to fill these new offices. What I am afraid of is that the real alternative is not going to be the alternative between the free choice of all these litigants who are going to have recourse to the court and the superimposed potentate selected by the central authority, and sent down clothed with the habiliments of royalty. That is not the question. The question is whether or not a man is going to be the choice of a ward leader or whether he is going to be the choice of the Governor. I am afraid that we will be trying an experiment under unfavorable conditions if we are going to make it likely that this new justice will start upon his career with a political ancestry in which his forbears are not those who are to be the litigants in his court at all but are those who are desirous of controlling from the outside the administration of the tribunal which is to be set up. That is the view which I am inclined to hold strongly at the moment. I may be entirely wrong. I think I am much more likely to get light upon the situation and to be corrected if I am wrong by adopting the proposal in the form in which the Chair has presented it to us, challenging the sentiment of the community to express itself in a way in which opportunity for discussion will be given, with the right reserved to us to act finally in the light of the information and education which we shall thus receive. So I am hopeful that at this stage of our deliberation we shall launch an experiment of an appointive minor judiciary and that the pending amendment to this resolution will not prevail.

Mr. FOX. Mr. Chairman: I do not want to contribute to the bewilderment of former Attorney General Carson, but I want to say at the outset that I am in favor of the appointive judiciary. I believe that the system that we have in the United States court is working satisfactory, and I am constrained to the belief that it does not work satisfactorily in Pennsylvania. I think that really we are having the appointive system in Pennsylvania although we do not recognize it; but when we come to analyze it and look at the courts as they are at present constituted in Pennsylvania, I think it will be found that a large number of the judges who are now sitting, not only in the appellate courts, but in the lower courts, were originally appointed by the Governor of the commonwealth, and subsequently elected by the people. Therefore I believe that the whole question of the appointing of judges could be safely entrusted to the Governor. I am not at all of the mind of my friend, Judge Kelly, that a non-partisan election law worked well in the common pleas district. My experience has led me to believe that the men who under the old system would be considered as possibilities at all, because of their public ambition, because of their successful accomplishments, become candidates for the court of common pleas, but I feel if we take the step that is now proposed and start at the minor judiciary and make that appointive that would be making a great mistake. It has been suggested by Judge Gordon that there are at least six thousand justices of the peace. We would start, therefore, with the influence of those

six thousand justices against the adoption of this Constitution, and I think we may also say that attached to each justice's court there is a constable, and he would be equally active in doing what he could to prevent the adoption of this Constitution. So that we may consider that there is a body of twelve thousand men which is actually opposed to any such infringement of their rights. Of course, if we propose that these minor judiciaries should be elected, each justice in the commonwealth would feel perhaps he would be the man who would be selected by his particular district to occupy the office which we are now creating. I cannot follow my friend, Mr. Pepper, at all in the thought that it is desirable for us as a sort of experiment to recommend at this time the appointment of these justices. I fear that we will not get the reaction that we hoped for; that is to say, that while we would encounter the opposition of all the people who are connected with the justices' courts, that that position would not be manifested in the public hearings which we would conduct, but they would wait until after they got the Constitution at the polls, and then they would make havoc of it. Feeling as I do, that in all the changes that we are recommending in this Constitution, we must not lose sight of the fact that we must present an instrument that will be acceptable to the electorate, I am constrained to believe that it would not be wise to make this departure at this time, and if the amendment which has been suggested by the Chairman is to be adopted, I think I should vote for the amendment which has been proposed by Mr. Voll. I confess, however, that I am inclined to believe that the draft which Judge Kelly prepared for our committee would be the one which after all will be found most satisfactory to the voters of the state.

Mr. THORPE. Mr. Chairman: Just one word, it seems to me, has been omitted. It is a sort of democratic word, and I will venture to express it. In the theory of government is it not true that participation by the people is the basis of sound government, and if we are going to eliminate popular election where it has predominated, are we not antagonizing those who believe in that principle? Now, Mr. Chairman, there seem to be only two states in the Union in which there is an appointive judiciary system by the executive, only two, Massachusetts and Delaware, if my memory is correct. I think not of Pittsburgh, which is my home, but of a lesser community in which I long lived. I am wondering whether out in that community the people would say, "We are competent to vote for justices of the supreme court, but we are not competent to vote for justices of the peace." Would they look at it in that way? It is now about ninety years since this elective system has taken precedence over the appointive in this very useful office in our institution. The appointive system is not local, it is generic. Is not the chief function of the justice of the peace a local function, and would not the people prefer largely to control? If this be an answer at all to the admirable presentation of the appointive system, if this be an answer at all, is it not an answer that appeals to the local voter? He says, "I am competent to judge whom I shall make justice of the peace, and this man that lives three hundred miles away and makes the appointment on the recommendation of the ring boss of the political party is a man who does not know as much about him as we do."

"Be not the first by whom the new are tried,
Nor yet the last to lay the old aside."

Mr. REED. Mr. Chairman: I think if we had a few working people here, people who are down among the masses, we might bet the action we want.

The CHAIRMAN. We look to you for that.

Mr. REED. Mr. Chairman: What I was going to say is that I am sort of in that class myself. When I was a law student, I was sent out by my preceptor to try a very important case before a local squire around the courthouse, a shrewd old Irishman. I was sent to try a case involving the great sum of seventy-five cents, between two neighboring grocers in the Diamond, who never spoke to each other, were deadly enemies, and were both good customers of the squire, and sent him lots of collections. The horse of one of these men ate the basket of the other that hung on the awning as an advertisement. That was a serious case to try, so he heard the testimony with great gravity and reverence. I forget whether I was for the basket or the horse, but he heard the testimony with great gravity, and he said it was a serious case and he would postpone his decision. Two weeks afterward I met the squire and I said, "What did you do with the basket case?" "Well," he said, "these men never speak to each other. They are both very good customers of mine, so I told the man who owns the horse that I would decide in his favor, and I gave the other man seventy-five cents for his basket, and threw off the costs." That was perfect justice, administered by a man of the people, who had been elected by the people, and lived right among them. Do you suppose that that appointed justice, appointed by the Governor, with all of his trappings of royalty, would have ever thought of such a common-sense solution as that? I believe that you are building up by this system one of the finest political bodies in the state. If I were a Governor, and politically inclined, which, of course, no Governor is, and had the appointment of four hundred justices who would come right in touch with the life of the people, and who had the power to send them to jail or let them go, and who are supported by a body of constables, I think I could maintain the uprightness and supremacy of the Republican party in the state for a long time to come. It is a tremendous change in the policy of the state. Of course, we ought to be courageous enough, if we believe in it, to vote for it, no matter what the people think about it or what will happen to us. On the other hand, we must keep one eye on the popular vote and what will happen to this Constitution, because there is no use in wasting our time on something that we know will not be popular and will not go. I cannot imagine anything that will incite more resentment, particularly in the country districts, of which Senator Fisher is the exponent, than this idea of taking away the justice of the peace, who is the neighbor and in many cases the friend of the people over whom he presides, and appointing some man who may be in the estimation of the farmer and of the ordinary workman the greatest pest, the young lawyer who has not any practice, and who is put there to decide his cases. Now, I do not claim that I feel that way about it, gentlemen, for there must be such, and finally they get to be old lawyers, and they do not know any more sometimes then. It strikes me in hearing this discussion whether there is not a middle ground that could be adopted. Now, your great vice in the election of justices of the peace is in the cities. The country squire in a common-sense way knows what to do; if he does some-

thing that is not right, the common pleas scolds him and he knows at least what the law is on that subject the next time. But take it altogether, he administers a pretty fair kind of justice, sometimes with an ax, but it is satisfactory to the neighbors. The great trouble that I see is in the cities. We used to have an old squire on the other side of the courthouse, who being a German, was always greatly impressed with the gravity of his position, and always swore the witnesses to give good evidence for the plaintiff. You can imagine what his decisions were with that conception of his duties. Is there any middle ground that can be taken by which justices of the peace can be elected for the country districts, and appointed for the cities? I throw that out as a sort of a compromise.

Mr. MUNCE. Mr. Chairman: It seems almost sacrilegious for me to say anything at this point after these beautiful perorations, but it has been suggested by one of our friends here that we leave certain things for the public hearings. I anticipate that we will have plenty to do when the time for public hearing comes. I believe it is the duty of this Commission as nearly as possible to clear up the way from time to time, so that we will give as little chance as possible for having trouble from the people. Now then, as a voice from the rural district with regard to this matter, I would like to say to you that I am in hearty accord with the proposition as you have outlined it to us by having districts for justices of the peace. That is the thing that is desired in the rural districts, as I have learned, but I do not think we would be doing the right thing in making that office appointive. I think that we should do as suggested by the amendment of Mr. Voll, and leave it to the districts to elect the men to the place. I believe that is the way that it would strike the people, and I think the thing ought to be done in that way. I do not think it is necessary to put out any feelers to draw out the people's opinion in the public hearings. I think we will have trouble enough along that line without fixing up anything more.

On the question recurring,

Will the Committee adopt the amendment?

It was adopted.

On the question,

Will the Committee adopt the substitute as amended?

Mr. GORDON. Mr. Chairman: What about the provision for the removal of those justices who have been elected by the people? There is a provision here that the electors may be overridden by the court of common pleas or the Governor may remove them.

The CHAIRMAN. The Chair took that from the substitute. The Governor, the Lieutenant Governor, and the judges are removed now by the legislature.

Mr. GORDON. Mr. Chairman: Yes, two-thirds of the legislature.

The CHAIRMAN. The difficulty about getting improper men removed is the tremendous machinery that has to be resorted to. The

machinery of impeachment is such that if it is desired to resort to that machinery it might be well to think over that question.

On the question recurring,

Will the Committee adopt the substitute as amended?

RECESS.

Mrs. MILLER. Mr. Chairman: I move the Committee of the Whole do now take a recess until 8 o'clock this evening.

Mrs. Warburton. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 5.50 o'clock P. M., the Committee took a recess until 8 o'clock P. M.

AFTER RECESS.

The Committee of the Whole reconvened at 8 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Committee having arrived, the Committee will be in order.

ARTICLE V, SECTION 11.

On the question recurring,

Will the Committee adopt the substitute as amended?

The CHAIRMAN. The Chair desires to offer the following as a substitute in lieu of the substitute offered by him this morning in order that it may be in accord with the amendments made to it.

The Secretary read the substitute as follows:

Section 11. For the better administration of justice, the general assembly shall provide for the division of the several counties of the commonwealth, except the county of Philadelphia, into convenient districts to be known as justice of the peace districts. Cities containing a population of fifty thousand inhabitants or less, as determined by the last United States decennial census, shall separately, or when joined with one or more boroughs or townships, or both, constitute separate districts. All other cities shall have one district for each fifty thousand inhabitants ascertained as aforesaid, to any of which districts may be added one or more boroughs or townships, or both. Boroughs, towns or townships may constitute separate districts, or may be joined with other boroughs, towns or townships. After each United States decennial census new districts may be created or the boundaries of existing districts altered; but in no case under this section shall boroughs or townships be divided.

One justice of the peace shall be chosen for each district, shall be elected by the qualified electors of the respective districts at a municipal election, and shall hold office for a term of six years from the first Monday of January next ensuing, if he shall so long behave himself well.

Justices of the peace shall have been inhabitants of their respective districts two years next before their election (unless absent on the public business of the United States or of this state) and shall reside in their respective districts during their terms of office. In districts containing a city, justices of the peace shall have been residents of the city for said period and shall be learned in the law. The said justices shall be removed from office for reasonable cause found by the proper court of common pleas after hearing and upon petition setting forth the said cause, signed by at least five hundred inhabitants of the proper district, or in the manner prescribed by article six of this Constitution.

Vacancies in the said office of justice of the peace shall be filled by the Governor.

Justices of the peace, as herein provided for, shall have the same jurisdiction and powers as are now conferred upon and exercised by justices of the peace, and such as may be conferred by law.

They shall receive a salary for all services rendered in any judicial proceedings, which shall be in lieu of all other compensation, and which shall be fixed by law

and paid by the proper county. All fees received for any such services shall be paid into the respective county treasury for the use of the county.

Justices of the peace and aldermen now in office shall serve out their unexpired terms, after which time the offices of justice of the peace and alderman, as they existed immediately prior to the adoption of this Constitution, are hereby abolished.

The general assembly shall, upon the adoption of this Constitution, regulate the costs in proceedings before justices of the peace, shall provide for the relief of persons who by reason of poverty are unable to pay such costs, and shall enact such other laws as may be necessary to fully carry the several provisions of this act into effect.

On the question,

Will the Committee adopt the substitute?

It was adopted.

RECONSIDERATION OF VOTE ON SECTION 4 OF ARTICLE V.

Mr. FOX. Mr. Chairman: I move that the vote by which section 4 of article V was adopted be reconsidered.

Mr. CARSON. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the Committee adopt the report?

ARTICLE V, SECTION 4.

Mr. FOX. In section 4, in some way this clause in section 5 was not incorporated, "but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each House of the general assembly." It seems to me that under the circumstances we should amend section 4 as heretofore approved by adding that phrase immediately after the sentence, "They shall hold office for a term of ten years, if they so long behave themselves well." I move that the section be amended in that way.

Mr. CARSON. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

ARTICLE V, SECTION 18.

The CHAIRMAN. The Chair would like to call the attention of the Commission to the fact that this section as now written provides for the payment of the salaries of all judges learned in the law by the state. Possibly we should provide now that the salary of the six judges in Philadelphia shall be paid by the county and that they shall be learned in the law.

RECONSIDERATION OF VOTE ON SECTION 18 OF ARTICLE V.

Mr. GORDON. Mr. Chairman: I move that the vote by which section 18 of article V was adopted be reconsidered.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,
Will the Committee adopt the report?

ARTICLE V, SECTION 18.

Mr. GORDON. Mr. Chairman: I move the amendment in the section to which you refer by adding "unless otherwise provided herein."

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,
Will the Committee agree to the amendment?
It was agreed to.
On the question,
Will the Committee adopt the report as amended?
It was adopted.

ARTICLE V, SECTION 22.

The CHAIRMAN. The next section in order for consideration is section 22 of article V of the Constitution, the report of Committee No. 2 being that the present section be amended.

The Secretary read the section as follows:

Section 22. In every county wherein the population shall exceed one hundred and fifty thousand the general assembly shall, and in any other county may, establish a separate orphans' court to consist of one or more judges who shall be learned in the law, which court shall exercise all the jurisdiction and power now vested in or which may hereby be conferred upon the orphans' court, and thereupon the jurisdiction of the judges of the court of common pleas within such county in orphans' court proceedings shall cease and determine. In any county in which a separate orphans' court shall be established the register of wills shall be clerk of such court and subject to its directions in all matters pertaining to his office; he may appoint assistant clerks, but only with the consent and approval of said court. All accounts filed with him as register or as clerk of the said orphans' court shall be audited by the court without expense to parties, except where all parties interested in a pending proceeding shall nominate an auditor whom the court may, in its discretion, appoint.

Strike out the remaining three lines in section 22 and substitute the following:

In every county where a separate orphans' court is established it shall possess all the powers and jurisdiction of the register's court and separate registers' courts are hereby abolished.

On the question,
Will the Committee adopt the report?

ORPHANS' COURT.

Mr. CARSON. Mr. Chairman: I wish to explain in a few words to the Committee the changes that are made by the amendment proposed. If you look at page 42 of the existing Constitution you will find that the last sentence with which the paragraph closes is entirely unintelligible "in every county orphans' court shall possess all the powers and jurisdiction of the register's court, and separate registers' court are hereby abolished." We have reported for adoption the preceding sentence exactly as found and then we strike out these three last lines and substitute the following: "In every county where a separate orphans' court is established it shall possess all the powers and jurisdiction of the registers' court and separate registers' courts are hereby abolished."

On the question recurring,

Will the Committee adopt the report?
It was adopted.

ARTICLE V, SECTION 23.

The CHAIRMAN. The next section in order for consideration is section 23 of article V of the Constitution, the report of Committee No. 2 being to retain the present section.

The Secretary read the section as follows:

Section 23. The style of all process shall be "The Commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the commonwealth of Pennsylvania, and conclude "against the peace and dignity of the same."

On the question,
Will the Committee adopt the report?
It was adopted.

ARTICLE V, SECTION 24.

The CHAIRMAN. The next section in order for consideration is section 24 of article V of the Constitution, the report of Committee No. 2 being that the present section be amended.

The Secretary read the section as follows:

Section 24. In all cases of felonious homicide and in all other cases to be provided for by law, the accused after conviction and sentence may remove the indictment, record and all proceedings to the supreme court for review.

On the question,
Will the Committee adopt the report?

APPEALS IN CRIMINAL CASES.

Mr. CARSON. Mr. Chairman: The section as it at present reads is unintelligible. It may be a misprint or there may be some omission in the present Constitution; it says "In all he provided for by law, the accused after conviction and sentence may remove the indictment, record and all proceedings to the supreme court for review." We simply amend it to read as follows: "In all cases of felonious homicide and in all other cases to be provided for by law, the accused after conviction and sentence may remove the indictment, record and all proceedings to the supreme court for review."

Mr. REED. Have you looked at any other copy of the Constitution to see whether it is simply a misprint or whether something has been omitted?

Mr. CARSON. No, sir.

Mr. FOX. The committee compared it with Smull's and it is the same in Smull's.

Mr. CARSON. It does not change the early Constitution at all.

Mr. GORDON. Mr. Chairman: I do not understand the provision as reported, "In all cases of felonious homicide and in all other cases to be provided for by law, the accused after conviction and sentence may remove the indictment, record and all proceedings to the supreme court for review." Is it not a fact that all cases may be removed to the supreme court, not only cases of felonious homicide?

Mr. CARSON. "And all other cases to be provided for by law."

Mr. FOX. Will you permit me to interrupt you, sir? The pres-

ent Constitution is "In all cases of felonious homicide, and in such other criminal cases as may be provided for by law."

Mr. CARSON. Mr. Chairman: I beg leave to withdraw this and move that we re-enact the present section of the Constitution. We were misled by this edition.

Mr. FOX. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. CARSON. Mr. Chairman: That means, of course, in the present Constitution correctly printed in Smull's Handbook rather than in this reprint.

Mr. GORDON. Mr. Chairman: I do not know that it makes much difference. At the time this provision was adopted we had no superior court and most of those cases were by law removed to the superior court and none at all to the supreme court. If the law should now be passed providing for the removal of these cases to the supreme court it would oust the jurisdiction of the superior court in these cases, and that certainly was not intended by the committee.

Mr. CARSON. Mr. Chairman: Oh, no.

Mr. GORDON. Mr. Chairman: It seems to me that the section will have to be overhauled, if I may use a nautical expression. I think it ought not to be adopted in its present form. It creates confusion in the law and it can not be contended that it should be adopted. I am a member of this committee nominally and technically, and I do not remember when we passed this, but it is all right; it gives an opportunity for discussion, but I would not want to see it pass in such form.

SECTION 24 OF ARTICLE V POSTPONED.

Mr. REED. Mr. Chairman: I move that this section be postponed until tomorrow morning, and until the Committee finds out what they are talking about.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE V, SECTION 25.

The CHAIRMAN. The next section in order for consideration is section 25 of article V of the Constitution, the report of Committee No. 2 being that section 25 be retained.

The Secretary read the section as follows:

Section 25. Any vacancy happening by death, resignation or otherwise in any court of record shall be filled by appointment by the Governor, to continue until the first Monday of January next succeeding the first general election which shall occur three or more months after the happening of such vacancy.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 26.

The CHAIRMAN. The next section in order for consideration is section 26 of article V of the Constitution, the report of Committee

No. 2 being that section 26 be retained.

The Secretary read the section as follows:

Section 26. All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction and powers of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process and judgments of such courts shall be uniform; and the general assembly is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the judges of the courts of common pleas and orphans' courts.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE V, SECTION 27.

The CHAIRMAN. The next section in order for consideration is section 27 of article V of the Constitution, the report of Committee No. 2 being that the present section be retained.

The Secretary read the section as follows:

Section 27. The parties, by agreement filed, may in any civil case dispense with trial by jury, and submit the decision of such case to the court having jurisdiction thereof, and such courts shall hear and determine the same; and the judgment thereon shall be subject to writ of error as in other cases.

On the question,

Will the Committee adopt the report?

It was adopted.

Mr. CARSON. Mr. Chairman: That is as far as the recommendations of the committee go. The others are reported here for discussion.

ARTICLE V, NEW SECTION.

The CHAIRMAN. The next section in order for consideration is a new section to article V of the Constitution, the committee having reported this section without recommendation.

The Secretary read the proposed new section as follows:

Any person who shall be unable, without great hardship, to employ counsel and to pay the costs of litigation shall be entitled to the gratuitous service of counsel, to be assigned to him by the court, and to relief from the payment of such costs, or both, as justice shall require.

And alternatively the following, which, if adopted, is to be given an appropriate number:

The general assembly shall provide by law for the assignment of gratuitous counsel and for relief from the payment of the costs of litigation to any person who shall be unable without great hardship to employ such counsel and pay such costs, as the case may be; provided, however, that the costs of litigation may be classified or graded according to the amounts in controversy.

GRATUITOUS COUNSEL.

The CHAIRMAN. As the Commission has no recommendation from the committee, it will take a motion to bring it to a vote before the Committee of the Whole.

Mr. PEPPER. Mr. Chairman: I move, to bring it before the Committee of the Whole—I am not sure that I shall vote for it—but I move the adoption of the first alternative.

Mr. REED. Mr. Chairman: I second the motion. I am going to vote against it.

On the question,

Will the Committee agree to the motion?

Mr. CARSON. Mr. Chairman: Now, I hope the motion will not prevail. I think we have already taken care of this feature of it by the amendments that we made to the two sections relating to justices of the peace in the state at large and to these new district peace judges of the counties of Philadelphia and Allegheny.

Mr. PEPPER. Mr. Chairman: Of course, as the Committee will see, this is applicable generally to the proceedings in all courts, not merely, as was the case with the section referred to by Mr. Carson, to the proceedings of these peace courts.

Mr. CARSON. Mr. Chairman: That is the reason it was reported out for discussion on the floor, but I think it would prove a very great mistake. It is simple enough for people to reach the court of common pleas. They ought not to be distressed by applications for the assignment of gratuitous counsel, in view of what we have done already that has disturbed some of the members of the bar. It would be a destructive assault on the members of the profession by providing that counsel could be obtained gratuitously.

Mr. REED. Mr. Chairman: I would like to ask the gentleman while he is on his feet, in case a poor man brings suit in one of these district courts, and the defendant takes out an appeal, is he to employ counsel from that time on, or is he still to be protected as the gentleman with the hardship?

Mr. CARSON. Mr. Chairman: I do not know that I can answer that question, as I have never been on the bench.

Mr. REED. Mr. Chairman: This is a serious question. You have said in your previous provision that there shall be no costs. Now suppose he is forced into the common pleas on an appeal, is he still to be protected, or does he then have to go out and hire a lawyer and pay the costs, because he is forced into the court of common pleas against his will?

Mr. CARSON. Mr. Chairman: I think he would have to throw himself on the mercy of some broad-minded or some generous counsel like yourself and other gentlemen on the floor. But to put in the Constitution a provision applicable to all the courts of all grades that on application counsel would be compelled to act gratuitously, shall render service, and that no costs shall follow, strikes me as rather an arbitrary method in the first place of dealing with the legal profession, and next with the courts themselves. It is an extension of relief probably beyond the bounds of practicability.

Mr. FISHER. Mr. Chairman: May I ask Mr. Carson whether or not this section as framed applies to criminal as well as civil cases?

Mr. CARSON. Mr. Chairman: Yes, I should judge it did. It is broad enough in its language.

Mr. FISHER. Mr. Chairman: This would relieve a convicted criminal from payment of costs?

Mr. CARSON. You will understand, Senator Fisher, that it has not the recommendation of the committee at all.

Mr. REED. Mr. Chairman: That is manifest.

Mr. CARSON. Mr. Chairman: Yes, it is. I do not know where it came from. It is embodied in the report made by our very obliging Secretary to our committee, in which he presents two alternative propositions. You will see they are contrasted. Of course, there is

an alternative proposition that comes afterwards. The first one just read makes it obligatory on the courts to appoint counsel, who shall give their services gratuitously, and the party be relieved; the second proposition is that the general assembly shall provide by law for the assignment of gratuitous counsel and for relief from the payment of costs of litigation for any person who shall be unable without great hardship to employ such counsel or pay such costs, as the case may be. The legislature can provide the plan by which the law can be carried into effect. It might meet the exigency of the case without making it a matter of constitutional obligation.

On the question recurring,

Will the Committee adopt the first alternative?

It was not adopted.

Mr. PEPPER. I move that the second alternative be adopted.

Mr. REED. I second the motion.

On the question,

Will the Committee agree to the motion?

The CHAIRMAN. The Chair would like to propose an amendment to the section, that is, to strike out the word "gratuitous."

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: Is that on the theory, sir, that the thing is not counsel but services?

The CHAIRMAN. Yes, sir.

On the question recurring,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee agree to the motion to adopt the second alternative as amended?

Mr. ALTER. Mr. Chairman: I was just going to say that in our county, and I have no doubt to such an extent as is required in other counties, this matter is taken care of voluntarily by the members of the bar. We have in our county a legal aid society which is supported by contributions from a great many lawyers, and has appropriated to it considerable funds out of the treasury of the bar association. I do not like to see the Constitution of Pennsylvania undertake to command the bar to do that which the bar out of a proper spirit is already doing.

Mr. PEPPER. Mr. Chairman: I feel the force of what has been said by Mr. Alter, and it is easy to see the general disposition towards this matter of the members of the Commission; but we must not forget, sir, that we go only a very short distance in the direction of giving relief to the litigant of slender purse if we make it easy for him to proceed to the stage of judgment in the court of first instance, and then make no provision for what happens when his adversary carries his case on appeal to a tribunal of procedure which is sufficiently complicated to make the services of a lawyer indispensable, and where the amount in controversy is such that the retaining of counsel is impossible. The document that has been referred to here a number of times, the report of the Carnegie Foundation on the subject of "Justice and the Poor," calls attention to the fact that many of the provisions for the relief of poor suitors in courts of first in-

stance are nullified by the failure to make corresponding provision with respect to the procedure on appeals. Everything goes well with the man with the small claim up to the stage of judgment below. Then comes the appeal by the adversary and it is impossible for him to pursue his advantage to final success. Now, Mr. Chairman, it is well enough for us to say that there are legal aid societies, but no matter how well meaning the persons are who conduct those organizations, no matter how public spirited the bar may be in responding to their appeal, the fact remains that the poor litigant regards himself as somewhat pauperized, thinks of himself somewhat as the man does who is told that he must apply to the society for organized charity. If his recourse to justice is made dependent either upon his ability to pay, or in default of that, recourse to an organization which he considers a voluntary charity, he has no vested rights. Now, we have in Pennsylvania, I was interested in learning from the memorandum that the Secretary has furnished us, we have already on the statute books, or at least in force as part of the body of our statutory law, an historic utterance on this subject. It goes back as far as the eleventh year of the reign of King Henry VII. The statute provides that "every poor person" shall be able to sue without cost and that the court shall "appoint attorney or attorneys for the same poor person or persons and all other officers requisite and necessary to be had for the speed of the said suit to be had and made, which shall do their duties without any reward for their counsels, help and business in the same."

That is one of the ancient British statutes which is regarded by the judges to have been included in the body of the statutory law brought over here by the first settlers. Now, this proposal is nothing more than reading into the Constitution that immemorial declaration of rights, and personally I am inclined to favor a statement in the organic law which removes this matter from the sphere of voluntary charity on the part either of members of the bar or of organizations formed for the purpose. I think we must seriously face the problem of bringing our legal procedure and its fruit within the reach of the man with small means. I think the way to do it is by recognizing that he has as much a right to justice as he has to education, and that it is no more charity on the part of the state to provide the one than the other. This declaration seems to me in the form proposed not to be perhaps ideal either in thought or expression, but it marks a beginning. It seems to me to be a step in the right direction, and I venture to hope that this ancient law for that reason will be adopted.

Mr. CARSON. Mr. Chairman: May I ask Mr. Pepper whether he thinks the re-enacting of the statute of Henry VII would be sufficient? You have the language there before you; I have not.

Mr. PEPPER. Yes, but I think that for the purposes of constitutional amendment we must use a style which is consistent with the rest of the document. The statute of Henry VII, if one refers to it, will be found to be expressed in quite striking but very quaint language unsuitable for re-enactment in a modern document, but the thought of this section that is now before the Committee of the Whole is substantially the thought which was expressed as long ago as in the reign of that king, and has ever since been part of the common law of England and, later, of Pennsylvania.

The CHAIRMAN. It cannot be the law in England, if the Chair

is correctly informed. The Chair's information is that in the criminal court of England a defendant called to the bar may from the dock summon any barrister in attendance from the bar, and under the rules of the order of barristers he is bound to defend the man who presents him with a sovereign, but the service is not gratuitous, and he is not compelled to carry the case beyond the point where he then tries it. Under this section as drafted, as the Chair sees it, the litigant could compel a lawyer to try his case gratuitously from the court of first instance to the supreme court. Now, may the Chair ask, is it not a fact—it is true in the county in which I practice—that any man can get counsel without having counsel assigned him by the court? He gets counsel to volunteer. I have never seen a man who has been in need of counsel who did not get it because of the spirit of the bar, or whatever you call it. But to put this as an obligation on the bar by law, it seems to the Chair, is going a long way, particularly in these days when there are many people who ought not to have their cases brought into court.

Mr. REED. Mr. Chairman: It seems to me that we will meet all the necessities of this case if you will add to the provision in the sections, whatever they are, relating to justices of the peace or peace justices, to add to the last sentence some word that will show that the cost of proceedings in their appeals are to be governed in the same way as the cost in the original proceedings. You will then enable the poor person who brings his suit before a justice, and the case is appealed by the defendant, at least to have his case tried without being responsible for the cost either on the appeal or in the common pleas. I do not think it is the proper thing to put into the Constitution a provision requiring the bar to serve gratuitously. I do not know that you can make them do it by any constitutional provisions you choose to adopt, and it is a very radical step to make a constitutional provision of that sort. If there is a real necessity for the protection of the defendant, the general assembly can take care of that by statute, and I do not know of any court or any bar association that in case of hardship will not take care of the case of the defendant. It is open to abuse. It is like those free dispensaries they have in the cities where lots of people come in and receive free treatment who could and ought to pay for it. You will find a great many people who find it a great hardship to pay lawyers. It is a hardship I suppose to most people to have to pay lawyers, and the court will have more trouble with these than they have now.

Mr. FISHER. Mr. Chairman: If this provision is to be adopted in our report, it seems to me there ought to be a little more definiteness about the beneficiaries of it. It says that counsel may be assigned and the payment of costs provided to any person who shall be unable without great hardship to employ counsel and pay such costs. It seems to me that is a very indefinite term to employ in a Constitution. Now let us meet the situation frankly. If we want to help anybody, we want to help them because of their poverty or because they are unable to provide counsel and to pay the costs. The old statute which has been cited here from England provides that it is for the relief of the poor. It is not a stigma on a person to be poor or to be recognized as being poor. I would suggest that we amend this by inserting in the fourth line after the word "any" before the word "person" the word "poor," and in the fifth line strike out the words "without great

hardship," so that the section will then read, "The general assembly shall provide by law for the assignment of counsel and for relief from the payment of the costs of litigation to any poor person who shall be unable to employ such counsel and pay such costs, as the case may be." Now, the constitutional provision simply provides a mode of relief which shall be applied by the general assembly. I think I may safely say that there is no bar in the state of Pennsylvania that does not voluntarily take care of this subject. I have never known at my own bar a poor litigant who has suffered from want of counsel, and I think that condition is generally prevalent. I think it is a matter of pride with the profession that it does not permit worthy litigants to suffer for want of counsel. I am perfectly willing in the cause of humanity to adopt a provision of this kind and to allow it to the legislature to provide the remedy. It may be that there will be some question as to whether or not a counsel could be coerced into rendering services even if it were in the state Constitution. I do not believe that that question would ever be seriously raised because we only do here what we do voluntarily anyhow. With these changes I am willing to support it.

The CHAIRMAN. The Chair would like to ask whether it is the understanding of the members of this Commission that this applies to plaintiffs as well as defendants, civil as well as criminal cases. The Chair offers this as a suggestion. It is within the knowledge of every one of us that there are certain people who haunt our offices and who bring cases that have no merit. Under such an act as this we would have counsel assigned in unmeritorious litigation that ought not to be brought for any reason.

Mr. FISHER. Mr. Chairman: In answer to your observation, this merely provides that the legislature shall have power over the subject. The legislature could afterward limit its application in any way it may desire. If it deems it wise to change the application of the law by limiting it to criminal cases, it may do so. I further offer the amendment suggested by Judge Reed to make the imperative "shall" read "may," that is, substitute the word "may" for "shall."

Mr. CUYLER. Mr. Chairman: I would like to ask Senator Fisher why have it at all in the Constitution. I cannot help but feel that such a clause in the Constitution would incite great indignation at the bar. It has been well said the bar has been liberal to a degree always in protecting the poor so far as legal aid societies are concerned. I take a very different point of view on it than Mr. Pepper. I think a poor litigant would have much more feeling of respect than to be compelled to go to a legal aid society and ask to have some lawyer assigned to him gratuitously. I really think if you write a provision like this in your Constitution, before you get through you will have a Constitution that will require volume after volume. It seems to me a most unfortunate suggestion.

Mr. PEPPER. Mr. Chairman: I am opposed to the amendment which makes this optional with the legislature. The theory which underlies the proposal is a theory which does strike many members of the bar as novel, because the profession for a long while now has been accustomed to its position of advantage in the control of the processes of justice in our courts; and it strikes us as a remarkable thing that there should be a declaration in the fundamental law that justice shall be free to citizens under any conditions. It is

just as if the processes of education had for a long time been so under the control of those who teach that surprise or indignation would be excited by the proposition that teachers should be assigned for the education of students without obligation on the part of the students to pay. It is another way of saying that under such conditions surprise or even indignation would be excited by the announcement of the principle that underlies our public school system. Now I take it, it would today be regarded as improper to make the benefits of the public school system dependent upon the proof of poverty, or to advocate the return to the system of charity schools so called and so conducted. Mr. Chairman, we are living in a different day from the day that is behind us. The people are beginning to ask themselves whether if it be true that justice is the greatest interest of man on earth, it is a function of the state to see that the processes of justice are made freely available for every citizen; and we members of the bar who have enjoyed a position of natural monopoly in the running of the legal machine must shake ourselves loose from a good many prejudices if we want really to understand what is going on in the minds of the people of this country today in respect to the courts and the law and the lawyers. It is time that we do a little independent thinking upon this subject. It is not a question whether the bar will be indignant. Maybe they will. It is not a question as to whether or not a traditional view is to be disturbed. Maybe it is best that it should be. The question is whether we shall have in our fundamental law a declaration that the general assembly shall put the processes of justice, without money and without price, at the disposal of those who without great hardship cannot pay to set the machinery in motion and keep it moving until the finished product is produced.

The CHAIRMAN. The Chair would ask Mr. Pepper a question: Has he ever known a case of that kind?

Mr. PEPPER. Yes I have, sir. I have known of cases of pretty much every kind that involved oppression, abuse and extortion by members of the bar at the expense of poor litigants.

The CHAIRMAN. That is where they got the money. I am asking Mr. Pepper whether it has come within his observation that any person was denied the right of counsel because counsel was not willing to defend.

Mr. PEPPER. It has come within my knowledge that poor people have abandoned perfectly good cases because they did not happen to come in contact with any of the public-spirited members of the bar who would have done them justice. You are thinking, Mr. Chairman, as all of us think, of what would happen to a poor litigant who happened to come to the office of any one of us, or to the office of any one of our friends, or of those whom we like to think of as like minded with ourselves in this matter. But it must not be forgotten, sir, that these poor people are without direction. They do not get into the hands of members of the bar who in all cases take the view of this matter which is entertained by the members of this Commission. It must not be forgotten that at present the processes of the court are mysterious to the poor litigant. He does not know how to go about it. He does not know how to go about the matter of seeking that which most of us are ready to give him. What I am contending for is an announcement in the fundamental law that the processes of

justice are free and that under proper restriction and proper condition justice may be had in this commonwealth without the precedent obligation to pay. I am quite willing—

The CHAIRMAN. Would you make it possible for them to apply somewhere, to associations, just as is now being done in the case of dispensaries, where the poor apply to the doctors and dentists?

Mr. PEPPER. Yes, I should, if it were not a fact that the dispensaries, medical, surgical and dental, are available freely and that recourse is had to them by the poor of the community; if such were not the fact, or, to put it differently, if the situation were comparable to this one, I should be of the same opinion with respect to those forms of relief that I am in respect to the processes of justice. But there is this difference, Mr. Chairman; the services of the physician or the services of the dentist are not a process of government. It may be that it is the duty of government to provide relief for the poor under these conditions, but we are discussing the conditions under which the judicial department of the government may be made available for the services of the citizen. It is a question of how we are to address ourselves to the legal machinery of the state as an agency for public service, and all that I am contending for is a recognition of the principle that it is not a charity to extend the relief afforded by that judicial machinery to the individual citizen. I am trying to look at it otherwise than from the traditional point of view of the bar, a body of privileged citizens occupying what has come to be popularly regarded as a rather abnormal relation to the machinery of justice established and maintained by the state. I for one would like to see it declared in the Constitution that the general assembly shall put the processes of justice within the reach of everybody, under such regulations as in its wisdom the general assembly may see fit to make.

Mr. CARSON. May I express the thought which has gone through my head while Mr. Pepper was speaking? His suggestion is to read into the Constitution not only a novel proposition with regard to the conduct of counsel, but one which makes it compulsory upon the legislature to provide by an act when you have gotten rid of the obligatory feature of the first suggestion. We now come to the question of the legislature's doing it by an act which makes it the duty of the court to assign counsel whose service will be gratuitous to any person who shall be unable to pay for the services of counsel.

The CHAIRMAN. May I ask Mr. Carson a question? Does that mean that in civil litigation a counsel must serve for nothing, or the state must pay the counsel for the services?

Mr. CARSON. Mr. Chairman: Yes, I am coming to that. I very much doubt the constitutionality of such an act under the Constitution of the United States, as to whether it is not taking the property of counsel away; you cannot commandeer counsel, their experience, their knowledge, their skill, their judgment, their methods of defending cases effectively. Mr. Pepper's thought might be that if it takes some such shape as this that the legislature might by an act provide for the election of a staff of officers attached to a court whose regular services shall be under assignment to represent plaintiffs and defendants. Say you had six men, a regular standing staff attached to the court, and three of them would be assigned one week to the prosecuting side of the case, and the other three to defend.

They could exchange places. They would have no other employment and would be paid for their services by the state. That gives the relief.

The CHAIRMAN. It seems to the Chair no litigant would have such an attorney.

Mr. CARSON. Mr. Chairman: Well, I do not know whether they would or not.

Mr. REED. Mr. Chairman: Well, Mr. Shakespeare, who was a contemporary of my friend, remarked something about a noble intellect being overthrown. I really am astonished at Mr. Pepper. He seems to have lost his sense of judgment on this subject. How are you going to make a lawyer work for nothing? How are you going to take his time and his labor and give it to somebody who comes in and says, "I cannot afford to pay you for trying this case," without violating the Constitution of the United States? It is a mystery to me. Even the Federation of Labor would not go that far. All that he said is very beautiful about the poor man and his troubles, and how you should make the processes law of this commonwealth free to him, let him know in some way that this commonwealth holds itself out to see that justice is done to everybody without expense, no matter how poor he is; but it is the practical carrying out of that sort of thing that is absolutely impossible in my judgment. What is hardship, and who is to settle this question of hardship? We have got some men and women who have saved a couple hundred dollars and they want to sue somebody. Now, it is a hardship to take that money out of the savings bank to pay a lawyer. Should the state interfere and direct Mr. Carson to try that case for nothing because that money is safe in bank and it would be considered a hardship to draw it out, and Mr. Carson has plenty? Why shall Mr. Carson not go and try that case for that person? The whole thing to me is an absurdity. With all due respect to my beloved friend, if you want to do something practical, provide that the general assembly may by appropriate legislation direct the assignment of counsel who shall be paid by the county or by the state in cases where people cannot pay. Then you have got something which is justice to the lawyer, and a protection to this poor litigant who is wandering around seeking justice. I do not believe there is any such animal. I have not seen any cases that have not been able to get a lawyer either through sympathy or by way of speculation on a contingent fee. In our county I do not know anybody who has suffered, certainly not in the criminal courts.

The CHAIRMAN. In the debate we had in the bar association it was made manifest, and it was made a matter of record, that instead of the poor litigant running around not being able to get justice, the lawyers had runners running around after the poor litigant.

Mr. GORDON. Mr. Chairman: I do not think the remarks of the gentleman from Philadelphia, Mr. Pepper, are wanting in reason or logic, or legal precedent. I am amazed, since it is time to speak of amazement, I am amazed that Judge Reed should say that he has never known or heard of a poor person, too poor to get justice, and having his or her small claim presented in a court of law. Very much depends upon the habitat and environment of the man. We ought to be thankful, those of us who are so situated, that the hardships of the poor are not thrust upon our vision and our hearts. I

think it is true today, more true than it ever was, that justice, as it is ordinarily administered in our courts, is not of easy access to the poor, and is still to a large extent the luxury of the rich. The act of Parliament which was referred to by Mr. Pepper, and which is nearly five hundred years old, was intended to meet a want which is still a want in all jurisdictions where justice is administered according to the old forms and by the old methods. I would like to call the attention of the Commission to the fact that the statute of Henry VII, in which the words "poor persons" are used, had relation to the appointment of counsel for the purpose of enabling such poor persons without cost to sue, and that their cases might be expedited. It had no relation to the poor defendant but to the person who wanted to go into court as a plaintiff and sue, present his or her claim for justice. Now, how does a person get into court under the modern practice of law? Let us all look each other frankly in the face, those of us who are attorneys, and say how does a person get into court with his or her claim.

Well, first a lawyer must be sought and retained. It is useless to say that a person can go into court without a lawyer. And how is a lawyer obtained? Well, I need not tell my legal friends how they are obtained. They are obtained in the first instance by the payment of a fee of money. There is no law which prescribes the amount, and it depends altogether probably upon the avidity of the lawyer or his estimate of the value of his services, or the question whether he is a much-employed man or not much employed; but in any case before the poor person can begin to put the wheels of justice into operation a lawyer must be paid. The poor cannot retain lawyers. Our profession is the custodian of many privileges and has a standing in the administration of justice which no other citizen has. Those privileges and that standing bring to the fortunate ones great emoluments. Riches are at the door of those whose skill and ability enable them to reach the heights of the profession. An excellent competence is within the reach of most of them, and few of them fail to obtain that reasonable competence, and when they do it is usually their own fault. The poor person cannot make any contribution to that competence of the lawyer. Very often the claim itself in its entirety would not retain a lawyer. If you concede that the poor claimant should pay a fee in proportion to the amount of the claim, that fee becomes so small that the lawyer who would accept it is either incompetent or unworthy, and would not be a fit attorney for the poor person. When the lawyer is obtained, then comes the buying of writs of service by the sheriff or constable, the drafting of papers, the filing in court, and payment for the filing and the amount of costs becomes oppressive to the poor; because I have already said that in some instances their claims are so small that if they had the money and could pay these costs and fees that their attorney would be not recompensed and would get no return. But that is the only way they can get into court and invoke the laws in the prosecution of their suits. That is a truthful picture and it has no exception. Now, I know that when the poor man is brought into court as the defendant either on the civil side or the criminal side the court will see, and generally the bar will see, that he gets justice. Every high-minded judge instantly when the poor man is brought into court as a defendant feels it incumbent upon his conscience to be of his counsel to the extent of seeing that he

is not oppressed by the plaintiff who has no right or equity. That is true of both sides of the court; but that is not where the injustice of existing legal administration lies. It lies beyond that at the door of the temple; it lies there in the case of the poor suitor who wants to get in and present his claim. The gentleman from Indiana, Mr. Fisher, wants to change the provision here and use the language, use the phrase "poor person." First, I do not think that adjective is a good qualification of the word person, and next it was used and is used now in a patronizing sense. Let me read you this statute of Henry VII, and see if you cannot see the favored one speaking of the poor souls that cannot get into the court because of their poverty, that "every poor person" shall be able to sue without cost and the court shall "appoint an attorney and attorneys for the same poor person or persons, and all other offices requisite and necessary to be had for the speed of the said suits to be had and made, which shall do their duties without any reward for their counsels, help and business in the same." I still think that the person who by reason of poverty requires to have the help of the officers of the law in presenting his case in court should not be called a "poor person." He should be designated as a person who cannot pay the costs without hardship. Something has been said about the societies in some of the cities, legal aid societies; we have one in Philadelphia. It is trivial. It is a reproach to the bar that it is as small and trivial as it is. I do not think they get in a year more than five thousand dollars in contributions from the entire bar association of Philadelphia. They do what they can and sometimes a person is so poor and so desperate and the case is so small that he goes to the said society and in a few cases, probably a few hundred cases in the year, some aid is given, but that is all. What of the thousands who by reason of the cost of litigation and counsel do not go to the legal aid society where the desperately poor go, and remain with the case in their possession and not in the possession of the court? It is they whom this provision is intended to reach; it is those who have a good cause but who cannot pay all the expenses necessary to carry it on, who cannot embark in the chances of litigation. In portraying what is the fact about the real administration of justice, I do not allude to the delays which are probably most oppressive in the case of the poor, the delays of justice to the man who is living on a wage and who comes to court expecting to try his case and loses his day's wages by reason of it. He cannot afford to have that case continued, and yet it may be. It may be continued for what would appear on the face of it to be reasonable and especially counsel comes in here to work injustice to the poor. If the defendant in such a case is a man of means he is quite able to retain counsel and probably very busy counsel, and the very ability of that counsel and his business may cause him to be engaged elsewhere, and because of that the poor man's case is continued. I am not going to further paint that picture. It is known to everybody here and I do not wish to seem to call up mere matters of sentiment. Like Mr. Pepper, I believe that the administration of justice should be free to him who desires it free by reason of poverty and who cannot pay. As early as five hundred years ago, in England, it was believed even then to be the right of the poor man, and as you will observe, the courts were required to appoint the attorney. I wonder if Judge Reed had been in

Parliament when that act was passed whether he would have said to the English Parliament. "Why, you cannot pass such an act as that; you cannot make an attorney represent a man unless you pay him." I do not think he would have said it, and I am amazed that he should say it now. It may be a condition of the office of attorney that he shall serve without fee or reward upon the order of the court. It is a fact now. The act which has been referred to in the brief furnished by the Secretary of the Commission shows that that act is in force in Pennsylvania, but it is a dead letter. I repeat again, in an experience so long at the bar that I do not care to call the number of years to the attention of the Commission, I repeat again that I have never known, except in some cases of hardship, of a poor man in court to whom counsel has ever been voluntarily appointed to defend him in a court of justice. Now, we passed some time ago an act creating the municipal courts in the city of Philadelphia. One of the provisions of that act is that the claim of the plaintiff shall be prepared by the officers of the court in legal form upon due request of the plaintiff. There is an illustration of where the officers of the court are required to perform the duties now performed by lawyers, to wit, the drafting of the cause of action of the plaintiff. If that can be put in an act of assembly creating a municipal court, it can be put in an act of assembly also with respect to other courts of common pleas. How it is to be done, is the question. In the committee on the judiciary the subject was considered at great length. It is not my object to disclose proceedings in committee except so far as they are reported out, but two committees have discussed this question with great earnestness and seriousness, and there was a very strong body of opinion in that committee that something should be done to make the law in its process in the courts of justice accessible to all, even to the poor, and if need be free, not invidiously free, but free as a matter of right. We all halted when it came to a question of how it should be done—the method. It was at this stage that the committee asked the Secretary of the Commission to prepare a brief on the subject, and the brief which I think has been printed and is on our files was prepared by the Secretary. It is a most able document. It was enlightening and helpful, and it shows that this idea which has been discussed here this afternoon is not a new idea in the English law, but was in full flower nearly five hundred years ago, and ought to be in full flower today, since that act of Parliament is in full operation in Pennsylvania; but for some reason it is not in operation in the courts, and the courts ignore it. I say it was difficult to see how this should be done. That difficulty exists more today. I do not like the phraseology of the section now under discussion, but I am in favor of making it obligatory upon the legislature to pass some law which shall provide that every man who cannot without hardship pay the cost of litigation and retain counsel shall have his suit urged and adequate legal counsel and advice given to him, and that the law shall in fact be free to all.

The CHAIRMAN. It occurred to the Chair that possibly the difficulty in big cities is that lawyers are in the big buildings, because the picture that Judge Gordon has painted of the poor suitor certainly does not exist in my part of the world. There are very few poor except in the great cities, desperately poor, particularly in

cities like Philadelphia, but I mean in the country where no such conditions exist.

Mr. FISHER. Mr. Chairman: To take this matter up in a logical way, and to test the sense of the Commission as to whether or not this provision if adopted shall be mandatory or optional with the legislature, I move to amend the first line by striking out the word "shall" and substituting in lieu thereof the word "may," and I ask for a vote on that amendment.

Mr. REED. Mr. Chairman: Would it be proper for me to suggest another amendment? I was going to vote on that one.

Mr. GORDON. Mr. Chairman: For information I would like to hear Judge Reed's amendment.

Mr. REED. Mr. Chairman: I am out of order; still I suggest to meet the difficulty that Judge Gordon and Mr. Pepper think exists that this be amended to read, "The general assembly may provide by law," or make it "shall provide by law for the employment of counsel, who shall be paid by the county under an order of court, and for relief from payment of costs of litigation of any person who shall be unable without great hardship to pay such counsel and pay such costs, as the case may be; provided, however, that the costs of litigation may be chargeable or graded according to the amount in controversy." That puts the burden where it ought to be, on the public.

Mr. KELLY. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: Judge Reed retains the mandatory words "shall" in his amendment.

Mr. REED. Mr. Chairman: Yes, sir.

Mr. PEPPER. Mr. Chairman: This is merely a provision that the general assembly in taking the action prescribed by the section shall also make provision for the compensation of counsel out of public funds upon an order of the court.

Mr. REED. Yes, sir, under order of the court.

Mr. PEPPER. Mr. Chairman: I shall be content with that amendment. I do not perceive that there is anything in the pending section which undertakes to compel counsel to serve without compensation. "The general assembly shall provide by law for the assignment of counsel;" there is nothing in the pending amendment which prescribes that the services of counsel shall be gratuitous.

Mr. REED. Mr. Chairman: I thought both those beautiful speeches were made upon the ground that it was the duty of counsel to give gratuitous advice.

The CHAIRMAN. It occurs to the Chair, Mr. Pepper, that unless it is provided by law that it shall be paid out of public funds, it could not be paid.

Mr. PEPPER. Mr. Chairman: Well, that may be, it seems to me a good amendment as far as I can see it. But I regret extremely that it is not possible for us to express our views on a great public question of this sort without having a member of the Commission rise and lament the unseating of our judgment or refer to what has been said here in debate as trivial and frivolous.

The CHAIRMAN. He was speaking in a Pickwickian sense.

Mr. PEPPER. Mr. Chairman: Very well, be it so; but I think it is going to clear the air enormously for the future proceedings in

this Commission if it is understood by every member that each of us has a right to express his views on a question before the Commission without being accused by fellow-members of the Commission of making appeals to passion or sentiment or having lost his balance or perspective, as the case may be. These matters, Mr. Chairman, are matters about which persons of intelligence may properly differ. These are matters which present themselves to different temperaments and different minds in varying lights; and it will not facilitate our proceedings at all if it is supposed that those who present views which are slightly out of line with the customary thought of other members of the Commission thereby exclude their proposals from rational consideration. This is a great public question, and the sooner the bar understands it the better. We are facing perilous times in this country, and it will not do for the reactionary to play ostrich and to close his eyes to what to some of us is obvious.

Mr. THORPE. Mr. Chairman: It is an old French saying that "consistency is a jewel even when made of paste." Now, Mr. Chairman, I will not speak of this matter in a relevant sense, but very strong men have given us much information, and we appreciate what they say. It has been but a few days ago that this Commission went on record that it would not do a thing that had been done fifty years ago. These very gentlemen, whose intellects I greatly admire, and whom I always did listen to with appreciation, were opposed to certain forms of education in this commonwealth which had for their object the Americanization of the state. Now, Mr. Chairman, I do not want to take the time of this Commission at this moment, but when this question comes up again I hope we shall have consistency. I believe in the functioning of the state for the benefit of all classes, for the poor or whoever they may be. I also believe we should turn our attention to the functioning of the state for the benefit of those ignorant of the processes of the law. "Consistency is a jewel even when made of paste."

On the question recurring,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee agree to the section as amended?

It was agreed to.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress.

ADJOURNMENT.

Mrs. MILLER. Mr. Chairman: I move that the Commission do now adjourn until tomorrow morning at 10 o'clock.

Mrs. Warburton. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 10 o'clock P. M., the Commission adjourned until 10 o'clock Wednesday morning, February 11, 1920.

Senate Chamber,

Wednesday, February 11, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the Commission having arrived, the Commission will be in order.

ROLL CALL.

The CHAIRMAN. The Secretary will now call the roll.

The roll was called by the Secretary and was as follows:

PRESENT—19.

Alter, Carson, Connelly, English, Fisher, Fox, Gordon, Kelly, Miller, Munce, Pepper, Perrine, Reed, Stackpole, Thorpe, Tyson, Voll, Warburton, Schaffer (Chairman).

ABSENT—5.

Cuyler, McCormick, Pinchot, Smith, Sulzberger.

The CHAIRMAN. A quorum of the Commission being present, the Commission will proceed with its business.

JOURNAL APPROVED.

Mr. REED. Mr. Chairman: I move that the reading of the Journal be dispensed with and the Journal approved.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports from committees at this time?

Mr. CARSON. Mr. Chairman: I report with regard to the amendment of section 22 to strike out the closing words, "In every county where a separate orphans' court is established it shall possess all the powers and jurisdictions of the register's court, and separate registers' courts are hereby abolished," and insert in lieu thereof "The orphans' court shall have such jurisdiction as is now or may hereafter be provided by law."

The CHAIRMAN. The amendment will go upon the calendar in its regular order.

AMENDMENTS TO SECTIONS 3 AND 6 OF ARTICLE III.

Mr. ALTER. Mr. Chairman: When the Committee of the Whole had before it sections 3 and 6 of article III of the Constitution certain changes were made which I thought were thoroughly understood, but as the sections appear in the tentative draft they do not

contain the provisions which I thought were provided for in our proceedings, nor do they harmonize with what does appear in the proceedings, so in order to get some action which will cause the sections to appear in the tentative draft as the Committee intended when it acted upon them, I wish to submit a draft of section 3 and a draft of section 6 to be typewritten and distributed for action later in the day.

The Secretary read the sections as follows:

Section 3. No bill, except general appropriation bills, codifications, compilations and general revisions of existing statutory laws, shall be passed containing more than one subject, which shall be clearly expressed in its title. Any law may in the body thereof set forth a short title by which it may be cited. A law amending, reviving or extending a law shall set forth in its title, the title or the short title of the law affected.

Section 6. A law amending, reviving or extending the provisions of a law shall set forth in full the part of the law affected, and an amending law shall also set forth in full the part of the law affected as amended.

The CHAIRMAN. The report will be received and will go upon the calendar.

METHOD OF PRESENTING CONSTITUTION.

Mr. THORPE. Mr. Chairman: There is a matter of interest which perhaps can properly be presented at this time. This Commission takes its place in the course of public affairs as a record-making body, recording the thoughts and opinions of the citizens of the commonwealth respecting its organic law. All its contributions and solutions of the problems that govern it are very helpful to posterity, and I would make a motion, or perhaps it will be made by some other member, suggesting whether or not our learned Secretary might not at his convenience submit to the Commission a brief of the method by which constitutions have been submitted in the past, so that we might know, and the public generally might know, what has been considered American precedent in these matters. The learned Secretary is familiar with these details, and I think it would be helpful to the members, and I think it will be ultimately helpful to the legislature itself. I will, therefore, make this motion that it be suggested to the Secretary that a contribution of this kind to the Commission would be acceptable.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

CHECKING COMMITTEE.

Mr. PEPPER. Mr. Chairman: I take it that when today's session ends there will be no further session until the tentative draft shall have been made public. I suggest, sir, that it is important that the several sections constituting the tentative draft be reviewed by some one group representing the Commission for the purpose of guarding against any inconsistencies or obvious oversight which it is natural to find in a series of sections that have been adopted as these have been adopted. I move you, sir, the appointment of a committee of three to constitute a checking committee to co-operate with the Secretary in reviewing the work of the Committee of the Whole and of the Commission in preparation of the publication of the tentative draft suggested; such committee having no authority to make changes

except in the case of obvious errors or inconsistencies, but having the right in all cases where such errors and inconsistencies appear to make the changes necessary to give coherence to the whole.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The Chair appoints as such committee Mr. Pepper, Dr. Thorpe, Judge Gordon and the Secretary.

CORRECTION OF ERROR.

Mr. ENGLISH. Mr. Chairman: I would like to call attention to section 23, on page 49 of the tentative draft of the Constitution. The word "income" appears before the word "tax." It is evidently an error in printing, because when this section was passed by the Committee the other day our attention was called to the presence of this word in the draft by the gentleman from Allegheny, Mr. Alter, and it was omitted from the draft as adopted.

The CHAIRMAN. The Secretaries say it will be corrected.

DISTRIBUTION OF JOURNALS AND TENTATIVE DRAFT.

Mr. KELLY. Mr. Chairman: I would suggest that some plan be adopted for the distribution of journals and for the distribution of the tentative draft when it shall have been finished, through members of this Commission; either through the members of this Commission, or in some way. I have no motion to make on the subject, but it would be very helpful, I think, to all of us to have copies enough of the tentative draft so that the people who inquire of us could be furnished each with one.

The CHAIRMAN. That would be a very good suggestion. The Chair has suggested to the Secretaries that it might be a good thing to send a copy to every member of the Pennsylvania Bar Association, of which there are over fifteen hundred, and to all the judges of the state. Of course, that list could be increased by any suggestion any member of the Commission has to make. I think Judge Kelly's suggestion that every member should have copies that can be distributed is a very good one.

SUGGESTED AMENDMENT TO ARTICLE V, SECTION 18.

Mr. FOX. Mr. Chairman: There is a suggestion that has come to me in thinking this matter over about which I have not had opportunity to confer with the sub-committee on the judiciary article. I do not know how it may strike my brethren of the committee. In the tentative draft, on page 14, it is provided in the legislative article that no term of any public officer shall be extended nor his salary or emoluments increased or diminished, except the emoluments of a judge may be increased. Now, in the section which we adopted yesterday it is simply provided that adequate compensation shall be fixed by law and paid by the state to the judges. My suggestion would be this, that we add "adequate compensation which may be increased but not diminished during the term for which such justice or judge shall have been elected. This compensation shall be fixed by law and paid by the state." Most of us know that during the time when the salary of the judges was originally increased there was some criticism of

the courts because they were allowed to pass upon the constitutionality of the question. I notice in one of the Philadelphia papers, the Philadelphia Press, an editorial suggesting that we make these matters as clear as possible when we revise the Constitution. Therefore, to take away from the court any odium that might attach by being obliged to pass on such questions, I make this suggestion.

The CHAIRMAN. If that is acceptable to the Committee, it will go on the calendar to be disposed of today.

Mr. CARSON. Mr. Chairman: I only want to ask Judge Fox a question, because I did not plainly hear his suggestion. Do you retain the word "adequate" in your suggestion?

Mr. FOX. Yes, sir.

Mr. PEPPER. Mr. Chairman: There are two changes I wish to propose at the proper time in connection with article IX. These changes have not been submitted to Committee No. 4 because there has been no opportunity for a meeting of that committee. Therefore, at the proper time I shall offer these suggestions on my own responsibility.

The CHAIRMAN. In Committee of the Whole?

Mr. PEPPER. I want to know whether they shall be introduced now or whether they can be called up at the time when the sections are passed upon.

The CHAIRMAN. You can call them up then.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

CONSULTATION OF SUPREME COURT BY LEGISLATURE.

The CHAIRMAN. The first subject in order for consideration is the reference by Committee No. 2 of a provision for the consultation of the supreme court on matters of law.

The Secretary read the reference as follows:

The committee also refers the inquiry as to whether it is deemed advisable to insert provisions by which the opinions of the supreme court may be consulted by either branch of the legislature and by the Governor on matters of law.

Mr. CARSON. Mr. Chairman: Committee No. 2 having received a communication from a member of the bar concerning a matter which the writer of the letter deemed important, thought that we ought to report out for consideration the suggestion embodied in that letter, but without expression of opinion on our own part. I for one hope that this suggestion will not prevail. The thought is borrowed probably from the Constitution of the state of Massachusetts which, so far as I recall, is the only state in which some such provision exists, where members of the legislature before the passage of an act and in doubt among themselves as to the probable constitutionality or even advisability of a certain statute are permitted to interrogate the justices of the supreme court in advance of the passage or the defeat of a bill. Now, I cannot but resist with all the strength of an opinion formed gradually through many, many years of study, such a suggestion as that. I think it proceeds from an entire misconception of the duty of the judiciary. It has been our pride and our

boast that our constitutional forms of government have been careful in separating the great departments into three, so as to preserve the independence of the judiciary, and it is menace of a most serious kind to the independence of the judiciary to have them in any way associated with legislation. That is not their function. Their function is to declare and interpret, but not to make the law. In addition to that, the judiciary ought to be of entirely independent mind when the work of the legislature comes before them for either the test of the Constitution or for interpretation, and to have judges of the highest court or even of a subordinate court committed in advance to some view on a proposed statute which it may thereafter be their duty or their function either to finally strike down or else to consider it in the nature of a pre-judgment robs the judiciary of its independence. The evolution of the independence of the judiciary is a very long story, and I do not intend to tell it. It covers a thousand years, but the attitude of the independence of the judge was exemplified in that striking incident of Lork Coke, when, as lord chief justice of England, he was interrogated by King James I as to what he would do in a certain case if it were brought before him. The justice said, "When that case reaches me I will do with it as a good judge ought to do." The king was so incensed at the reply that he unfrocked the chief justice, but it is one of the glories of our jurisprudential history that Coke displayed resolution, courage and independence in the face of one of the most arbitrary monarchs that England ever saw. Now, it would be a step backwards for us to adopt a suggestion like this and have the legislature request the supreme court to ascertain what their possible views might be on a statute in contemplation. I therefore move, sir, to get this matter before the Committee, that this be rejected.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

"SUGGESTIVE CHANGES" DROPPED FROM CALENDAR.

The CHAIRMAN. It is the understanding of the Chair that all matters on the calendar which follow beginning with section 5 headed "Suggestive Changes" are to be dropped because of the fact that action already taken by the Committee of the Whole is entirely out of line with all the suggested changes. We have already provided that the judicial power of the commonwealth shall be vested in courts other than the supreme court. We have adopted a great many sections which are based upon courts other than the supreme court being constitutional courts, and we would have to go back and undo all that if we were to follow these changes.

Mr. CARSON. Mr. Chairman: We would have to do more than that, we would have to reverse our history from the time of the charter down. I am glad to hear it, sir, because it will save discussion.

The CHAIRMAN. The Chair rules that all the matters beginning with article V, "Suggestive Changes," and running through pages 11 and 12 on the calendar are not before the Committee of the Whole for

the reason that the Committee of the Whole has already acted in the matter in a way contrary entirely to the changes which are therein embodied.

In regular order we will go back to the first page of yesterday's calendar, which deals with municipal sections. Mr. Connelly has telephoned the Chair that he is on his way here with changes that he desires to submit to the report of the committee. I think we have other matters that we can take up which will occupy our time until Mr. Connelly gets here.

We will now take up the supplemental calendar of yesterday, which the members have on their desks.

ARTICLE VIII, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article VIII of the Constitution, the report of Committee No. 3 being that it shall be amended.

The Secretary read the section as follows:

Section 1. Every citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections, subject, however, to such laws requiring and regulating the registration of electors as the general assembly may enact:

1. He shall have been a citizen of the United States at least one month.
2. He shall have resided in the state one year (or, having previously been a qualified elector or native-born citizen of the state, he shall have removed therefrom and returned, then six months) immediately preceding the election.
3. He shall have resided in the election district where he shall offer to vote at least sixty days immediately preceding the election.
4. If twenty-two years of age and upwards, he shall have paid within two years a state or county tax, which shall have been assessed at least two months and paid at least one month before the election.

On the question,

Will the Committee adopt the report?

QUALIFICATIONS OF ELECTORS.

The CHAIRMAN. The recollection of the Chair is that this amendment was offered yesterday by Dr. Thorpe, and provides for the striking out of the words "two months" and the insertion in lieu thereof of the words "sixty days." Am I correct in that, Dr. Thorpe?

Mr. THORPE. Yes, sir; that is all.

Mr. REED. Mr. Chairman: Was not clause 4 amended by striking out poll tax?

The CHAIRMAN. What is that?

Mr. REED. In clause 4, on motion of Mr. Voll the requirement of the payment of a tax before voting was stricken out, if my recollection is right, although I think it ought to be in.

The CHAIRMAN. The whole matter is before the Committee of the Whole; if it was stricken out, it could be put back again by amendment.

Mr. REED. Mr. Chairman: I do not like to do it in Mr. Voll's absence, but I move to reinstate section 4 as it now is contained in the present Constitution.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. GORDON. Mr. Chairman: I hope the motion will not pre-

vail. When the committee struck out this provision I think it did it deliberately, and after full consideration of all the arguments on both sides. The provision that an elector shall have paid a tax to entitle him to vote was originally the modern equivalent of the ownership of an estate of a fixed value. It very soon came to be seen that was making a property qualification of the voter, and it was gradually done away with and very properly; a tax in place of an estate, if that be the idea. If it be the thought that in order to qualify a citizen to vote he shall have paid a sum of money into the treasury of the county or the state, if that be the qualification, it should rest upon something substantial. This provision is simply that a tax shall have been paid without regard to the amount. It has come down in the city of Philadelphia to the payment of a poll tax of fifty cents. There has been a steady effort to get rid of that qualification. There was first an effort to allow this to be paid by an agent of the voter, because it was recognized that it was so trivial that voters pay no attention to it whatever, and they therefore would be in default on election day, and the man otherwise qualified could not vote because he had neglected to pay the fifty cents. The local collection of this was neglected, and for years the Philadelphia parties have paid that tax. It has run into thousands and tens of thousands of dollars. I think one year it possibly amounted to an expenditure of more than one hundred thousand dollars to equip the voters, and it is today paid by the political parties. A more recent amendment allowed it to be paid at the time of registration in the cities so that the convenience of the voter might be consulted and he might hand over the fifty cents when he was registered. Fifty cents to be allowed to exercise this important right of the free man! It is ridiculous. It is belittling the suffrage. The reason of it has gone and it lingers here simply to be an agency of electoral corruption. I speak, I am sure, the experience of every Philadelphian who has any connection with politics in that city, when I say that the poll tax has been retained in the political divisions by the leaders, and handed to the poor voter when he comes up to vote, and is withheld if there is any question about how the poor voter will vote. Mr. Chairman, I hope this vestige of an old qualification, the property qualification, will disappear from our Constitution, because its retention serves no good purpose. Quite the contrary; it serves an evil purpose practically in connection with elections.

Mr. ALTER. Mr. Chairman: May I ask the gentleman from Philadelphia if he would be willing to strike out of his remarks the expression "poor voter" and substitute the expression "voter who cannot pay the tax without undue hardship?"

Mr. GORDON. Mr. Chairman: I think that the tone in which I used the word "poor" would convey to the usually apt mind of the gentleman from Allegheny that I used it in a Pickwickian sense.

Mr. ALTER. It is one of the great misfortunes that the tones of the gentleman from Philadelphia cannot be reproduced and perpetuated in the Journal.

The CHAIRMAN. A suggestion has come to the Chair that certain members of this Commission might be quite concerned in, that is, when Mrs. Miller and Mrs. Warburton marshal their hosts where are the hosts to get the money to pay the poll tax? Are they to borrow it from the head of the family or to forego the next day's movie exhibition? How is that to be done? It might become a ser-

ious family condition. It occurs to the Chair in view of the things that have been suggested and considered on this subject it might be an advisable thing to leave this question as it stands now until after we have had the public hearings, because I think it is likely that it will come before us then. I am sure it will come before us in the public hearings if it is changed here, and I think very likely it will come before the public hearings if it is not changed. That is just a thought that occurs to the Chair.

Mr. REED. Mr. Chairman: I do not desire to press it, but it is on the calendar today.

The CHAIRMAN. It is on the calendar.

Mr. REED. Mr. Chairman: I think the article should be amended. I do not want any advantage to be taken of anything that will improve the elections in Philadelphia. Of course, anything that will improve the elections in Philadelphia will appeal to us all.

The CHAIRMAN. Then the Chair understands that the suggested amendment of Judge Reed is withdrawn.

Mr. CARSON. Mr. Chairman: I was only going to say that I heartily and entirely agree with what Judge Gordon has said.

Mr. THORPE. Mr. Chairman: Does that leave the matter in parliamentary form to come before the public hearings?

The CHAIRMAN. Anybody coming before the Commission in the hearings could propose as an amendment a re-insertion of the paragraph. Of course, I think that question would be argued.

Mr. THORPE. In the tentative draft as submitted that will not appear?

The CHAIRMAN. In the tentative draft as submitted that paragraph will not appear.

Mr. REED. Mr. Chairman: It is in there now.

The CHAIRMAN. It will appear in brackets as having been omitted by the action of the Commission so that attention will be called to it.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE VIII, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall be adopted without change.

The Secretary read the section as follows:

Section 3. All judges elected by the electors of the state at large may be elected at either a general or municipal election, as circumstances may require. All elections for judges of the courts for the several judicial districts, and for county, city, ward, borough and township officers, for regular terms of service, shall be held on the municipal election day; namely, the Tuesday next following the first Monday of November in each odd-numbered year, but the general assembly may by law fix a different day, two-thirds of all the members of each House consenting thereto; provided, that such elections shall be held in an odd-numbered year; provided further, that all judges for the courts of the several judicial districts holding office at the present time, whose terms of office may end in an odd-numbered year, shall continue to hold their offices until the first Monday of January in the next succeeding even-numbered year.

On the question,

Will the Committee adopt the report?

It was adopted.

ARTICLE VIII, SECTION 16.

The CHAIRMAN. The next section in order for consideration is section 16 of article VIII of the Constitution, the report of Committee No. 3 being that this section shall be adopted without change.

The Secretary read the section as follows:

Section 16. The courts of common pleas of the several counties of the commonwealth shall have power, within their respective jurisdictions, to appoint overseers of election to supervise the proceedings of election officers and to make report to the court as may be required; such appointments to be made for any district in a city or county upon petition of five citizens, lawful voters of such election district, setting forth that such appointment is a reasonable precaution to secure the purity and fairness of elections; overseers shall be two in number for an election district, shall be residents therein, and shall be persons qualified to serve upon election boards, and in each case members of different political parties; whenever the members of an election board shall differ in opinion the overseers, if they shall be agreed thereon, shall decide the question of difference; in appointing overseers of election all the law judges of the proper court, able to act at the time, shall concur in the appointments made.

On the question,

Will the Committee adopt the report?

OVERSEERS OF ELECTIONS.

Mr. FISHER. Mr. Chairman: I wish to draw attention to the wording of this section. The provision is that the courts of common pleas of the several counties of this commonwealth shall have power within their respective jurisdiction to appoint overseers of the election, to supervise the proceedings of election officers, and to make report to the court as may be required. Now, that wording collides with the provision adopted by the Commission yesterday. The appointment of these overseers of elections is certainly not a judicial function. It seems to me that we ought to have that jewel of consistency even if it is paste—I adopt the expression of Dr. Thorpe—and revise this section so that it is in harmony with the provision adopted yesterday stripping the courts of all powers save those that are strictly judicial.

Mr. ALTER. Mr. Chairman: As I recall the provision adopted yesterday, it prohibited any appointments except those herein provided for, which would be consistent now with this section.

Mr. FISHER. Mr. Chairman: That is true, but we heard a good deal about the principle involved, how hard it was to maintain the purity and integrity of the court within its own functions. Now we are going to allow the courts to have this power to supervise elections. I cannot see any objection to it myself. We still collide with this principle that was involved in the discussion if we allow the courts to have this power. Why should we not go back and revise what we have done before, and allow them those other powers that are no more objectionable in the country than this one is? Of course, you can put this into the Constitution, but if we are going to stand on this high principle in the maintenance of the purity and integrity of the court, I still insist that we ought to be consistent about it. I therefore move that this provision shall be stricken out.

Mr. PEPPER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. GORDON. Mr. Chairman: I think there is some distinction

between this duty, which is semi-judicial, and the appointing power which we yesterday took away from the judges. This provision requires the court on petition, which is in form therefore an appeal to the court through written pleadings, to appoint for a particular duty two overseers, one of each political party, upon an allegation made by the electors who file a petition that fraud is possible or is anticipated; and the appointees thus appointed on petition containing the averment required by the organic law that two appointees for that election, which in duration is twenty-four hours with all its duties, those two appointees perform supervisory duties at the election and then disappear. Neither in the functions of the persons thus appointed, the duration of their duties, their emoluments, or in any other respect, do they militate against the principle which induced the adoption of the amendment offered by Mr. Pepper. It is not patronage, and could never become such; but it is given to the judges in an emergency to provide in the situation where fraud is alleged to be contemplated the right to appoint two persons to be present at the election in order to prevent that fraud. It seems to me that while that may not be strictly judicial, neither is it an imposition on the judges of that form of patronage which might make them superserviceable, or which might destroy their independence. On the other hand, it attaches them to an important and vital governmental matter, and that is the purity of the election. The same argument probably would induce this Commission, if it did what the gentleman from Indiana wishes, to take away from the judges the duty of counting the vote and certain other duties in connection with the elections, all of which are performed in open court, with all the surroundings of a judicial proceeding, and upon written documents. There is nothing in that duty which is at all obnoxious to the principle upon which we acted yesterday. I should very much dislike to see this disappear from the organic law because it is a provision intended to secure honest elections.

Mr. PEPPER. Mr. Chairman: I share the views which have been so well expressed by Judge Gordon. This seems to me to be merely a case in which we extend to public elections a jurisdiction which is entirely familiar in the case of corporate elections where either disturbance or fraud is anticipated. It is an established jurisdiction of the court to appoint an officer for conducting elections under such conditions, and I see no reason why that jurisdiction would not be extended with advantage to cover the case not merely of stockholders of private corporations, but where the voters of a community are concerned.

Mr. REED. Mr. Chairman: Before we leave this subject we had better be certain that our amendments of yesterday do not prevent the judges from counting the vote. I only suggest that for the attention of the Committee.

Mr. FISHER. Mr. Chairman: In raising this question I want to explain that I believe this is a proper function of the court, but it is not a judicial function. By no stretch of the imagination can it be held to be a judicial function. I am very glad to have the support of the distinguished gentlemen from Philadelphia, because their arguments, strong and pointed as they are, simply sustain my contention of yesterday that there are numerous minor functions which can be and ought to be performed by the court. I think it is

a mistake. I thought it a mistake for us to strip the courts absolutely of all nonjudicial powers so that it becomes necessary, if we want again to clothe them with any of those powers, to amend the Constitution. I shall not ask any member of the Commission to vote for the rejection of this provision. I simply call attention to it so that the remarks made pertinent to this matter may be applied to the section on which we acted yesterday and may have some force when we come to consider that provision again by the full Commission.

Mr. ALTER. Mr. Chairman: Beginning in the thirteenth line is the provision, "shall be residents therein," which compels the court to appoint as overseers men who are residents in the precinct in which the overseers are to act. Now, of course, that should ordinarily be done by the court, and in any event would almost always be done. Nevertheless, it is quite clear, I think, to anyone who has much experience, especially in elections in large cities, that there will arise occasions when it will be desirable and important that one or more of the overseers be selected from outside the district. In some cases it may be impossible to obtain a competent overseer who resides in a district; but to bring the thought before the Committee, I move to strike out those words, in order that the court will have a little more latitude in making the selection.

Mr. PEPPER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. FISHER. Mr. Chairman: As a practical proposition I doubt the wisdom of giving the court the liberty of going outside the particular precinct where the election is held. It would open up the way for the importation of outside interference. Of course, I would not want for a moment to imply that any court would lend itself to the influencing of elections by placing in charge overseers from another district. It does seem to me, however, that there would be a great deal of resentment on the part of the electors of the particular district if you would bring in strangers and put them in charge. It would be an autocratic exercise of power. It would undoubtedly lead to much resentment and opposition. I am convinced that if we are to have these overseers we should restrict the court to appointments from the districts in which the election is held.

The CHAIRMAN. The Chair knows of certain election districts in which if that has to be done a suit of armor would have to be provided for the overseers. But what Mr. Alter says is also true, there are election districts in which it is impossible to get overseers of the right kind to act. That has been my experience in more than one election.

Mr. STACKPOLE. Mr. Chairman: It is, of course, particularly difficult for those of us not learned in the law to follow all the interpretations which have been offered here from time to time; but we are willing to follow the lead of the distinguished gentlemen who have given the study of years to this question. I agree with Senator Fisher, however, that if this particular amendment is enacted we should not be surprised at all before this Commission completes its work to feel impelled to drag back into the organic law the things which have been stricken out this week. I personally do not like to see the tendency toward a cloistered judiciary. We in the country

districts, so to speak, away from the big cities are not confronted with the situations which seem to confront our friends from Philadelphia, for instance, and Pittsburgh. The judges in the smaller cities and country districts are regarded with great respect and confidence for the most part, and we are willing to submit to them matters which we would hesitate to submit to a commission or to appointees of the court. For instance, in Harrisburg we are considering the creation of a Harrisburg Foundation, the functions of which are, of course, obvious. Now, one of the strong factors of the proposition is the suggestion that a number of the trustees to be created in forming such a commission shall be appointed by the court, and that the operations of the Foundation shall be supervised in large measure by the court; and by reason of that fact the community has already manifested very general interest and approval of the provision. Now, if in the operation of the amendment of yesterday there should be taken from the court the nonjudicial appointments, then that strength of the proposition disappears. I am not going to presume to argue that this ought not to be done, but I must confess that I am a little puzzled whether or not we are proceeding towards a conclusion which might in the long run be unfortunate.

On the question recurring,

Will the Committee agree to the amendment of Mr. Alter?

It was not agreed to.

On the question recurring,

Will the Committee agree to the amendment of Mr. Fisher?

Mr. FOX. Mr. Chairman: I am in entire accord with the view of Senator Fisher that the adoption of this is an inconsistency, and yet at the same time I think it very desirable that we should adopt it. The more I reflect on the action taken yesterday with reference to the question of appointments the more I am persuaded that we ought in some degree modify that action. I think that perhaps we have proceeded without adequate and definite information as to just what function the courts in the country may have as to appointments. I suggest that before we meet again the Secretary be requested to prepare for us a statement showing just what appointments are made by the court. Judge Gordon suggested that this particular section may be differentiated by reason of the fact that a petition is presented to the court and that it is done in open court. I would suggest to him that that is also true of many of the appointments which we had in mind yesterday when we were debating the matter and pressing that the application of this particular section should not be made to the country districts. There are many cases in which petitions are presented to the courts for appointment and presented in open court just as in this case. I think, therefore, that if that distinction is maintained we will have, as I said a moment ago, to modify our action somewhat.

On the question recurring,

Will the Committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE IX, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article IX of the Constitution, this section having been restored to the calendar.

The Secretary read the section as follows:

Section 1. All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the general assembly may by general laws provide for the creation of taxing districts to facilitate public improvements therein, may by such laws classify the subjects of taxation for the purpose of laying graded or progressive taxes; and may assess and tax land, improvements and timber separately at either the same or at different rates, or may assess and tax either without taxing the other.

On the question,

Will the Committee adopt the report?

TAXES TO BE UNIFORM.

Mr. REED. Mr. Chairman: I would move to amend and substitute for the report of the committee this provision:

"Section 1. All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. The general assembly may by general laws provide for the creation of taxing districts to facilitate public improvements therein, and may by such laws assess and tax lands, improvements, minerals and timber separately, or may assess and tax either without taxing the other."

Mr. ALTER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: Will Judge Reed just in a word call our attention to the difference between his proposal and the section as it stands?

Mr. REED. Mr. Chairman: The difference is that I have stricken out the words "may by such law classify the subjects of taxation for the purpose of laying graded or progressive taxes." As I understand, this proposition was to come before the Commission after the election in the fall, but it seems to me that we ought not to leave the section in an incomplete state in this tentative draft that goes out, but we ought to adopt so far as we can so much of it as is not affected by the election of next fall and let that go in the draft.

Mr. PEPPER. Mr. Chairman: I venture to express the hope that Judge Reed's amendment will not prevail. The words which are stricken out by his proposal are identical with the words embodied in a resolution for the amendment of the Constitution in this particular which has passed two successive legislatures.

The CHAIRMAN. May I ask for information? Have you verified that, Mr. Pepper? Is that correct?

Mr. PEPPER. Yes, sir. When I say I verified it, I mean it is so stated in the memorandum submitted to us by the Secretary. I verified it to that extent, and I think I am right in saying that I did turn to the appendix of the pamphlet laws of 1917 and 1919, as I

have done in a number of cases, and I think the Secretary's statement is confirmed, but I am not positive about that confirmation.

The CHAIRMAN. The reason I asked is that there were some amendments pending before the preceding legislature which did not pass the last legislature.

Mr. PEPPER. We could send for the pamphlet laws of 1917 and 1919.

The CHAIRMAN. For the purpose of your discussion we will take it that that has passed.

Mr. PEPPER. Mr. Chairman: The committee in reporting the section as it appears was influenced by the thought, first, that the proposal itself to give to the general assembly power to lay graded and progressive taxes is a proposal which should receive the serious attention of this Commission, as the principle of adapting the tax to the ability of the taxable to pay is in accord with modern theories of taxation, and we were also influenced by the thought that if, as we apprehend, the language of the report had twice passed the legislature, it was an indication of popular interest and of popular approval of the proposal. We thought, however, that if the insertion was merely to take its place in our tentative draft that we should have an opportunity to revise our decision in case at the general election next autumn the amendment proposed by the legislature were to be defeated. In any event, it seemed to us wise to place the matter before the Commission when the section was originally put upon its passage, and it seems to me that it would be a mistake at this stage of our deliberations to reconsider what was done then.

Mr. REED. Mr. Chairman: The committee was in an unfortunate situation. The members of the committee who live in different parts of the state held a conference in Philadelphia before the first of the year, and my recollection, I am not disputing Mr. Pepper's recollection, but my recollection was that we did not vote on the question of the graded or progressive tax. We did practically agree upon the other section. The understanding that I went away with was that that particular matter was to go over and not to be reported by the committee with any recommendation either for or against it until after the election of next fall.

Mr. PEPPER. That is entirely correct, Judge Reed, as you have stated it. That portion of the section was reported out by the committee without recommendation in view of the fact that we believed the question to be pending before the people.

Mr. REED. Mr. Chairman: Now, all that I want to accomplish by this is that we shall put something into this draft, the things on which we will undoubtedly agree; namely, section 1 as it now stands with the addition of the matter that I have read, and leave this graded tax matter out entirely. We ought not to stamp it either with our approval or disapproval until after it has gone before the people, and then if it is passed it is a matter of five minutes to insert it in the provision.

The CHAIRMAN. The Chair understands that the proposition involved in this question is whether or not there shall be an income tax in Pennsylvania.

Mr. REED. No, sir; it is more than that. Today the legislature has the power to impose an income tax.

The CHAIRMAN. But they cannot grade it.

Mr. REED. They cannot grade it.

The CHAIRMAN. Some states are coming to be a haven for people who do not want to pay an income tax, especially Delaware.

Mr. CARSON. Will it hold them all?

The CHAIRMAN. Temporarily.

Mr. ENGLISH. Mr. Chairman: Might I ask the gentleman from Philadelphia, Mr. Pepper, whether the joint resolution does contain also the latter part of the section, the words "may assess and tax lands, improvements and timber separately at either the same or different rates, or may assess and tax either without taxing the other?"

Mr. PEPPER. No, sir. The resolution as I understand it contains only these words, "that the general assembly may classify subjects of taxation for the purpose of laying graded or progressive taxes." I think that was the whole of the matter that was embodied in the proposed amendment, and the copy of the pamphlet laws that has just been submitted to me appears not to contain that resolution. Judge Reed says it is here. I cannot answer the question offhand. The Secretary reported it to the committee, and reported it to the committee as having been adopted by two successive legislatures and as pending for submission to the people next fall.

The CHAIRMAN. The recollection of the Chair is that it was not adopted, but the acts of 1919 will show.

Mr. REED. My recollection is that it went through the legislatures of 1915 and 1917, but not 1919.

The CHAIRMAN. The Chair's recollection is very hazy on the subject, but I do recall that in the last days of the session there was developed in the legislature an opposition to some amendment to the Constitution, and I think this is the one. My recollection is that it did not even come out on the floor. But I am not certain that it was ever acted upon by the legislature. My recollection is that in 1919 no constitutional amendment went through the legislature, or only one at the most.

Mr. PEPPER. May I suggest that we pass this section for the moment and that the Secretary be requested either to confirm or correct the report previously made to us on the subject, because it does seem to me that a good deal of light will be thrown on the pending question by the decision of that mere matter of fact?

The CHAIRMAN. Unless there is objection the matter will be passed for the moment.

Mr. FOX. Mr. Chairman: Before we pass that, may I ask Mr. Pepper a question on an entirely different subject? What was done with the last clause of section 1 of article IX in the Constitution as now existing as to exemption of taxes for public property?

The CHAIRMAN. The Chair is advised by one of the deputies in the Attorney General's department, and it now begins to come back to the mind of the Chair, that the question was submitted by some branch of the government to the Attorney General's office for an opinion as to whether or not this section could be voted upon at the coming election; the opinion, as I recall it, was that it could not be for the reasons set forth in the opinion. Attention was called to the fact that the resolution provided that it should be submitted in an odd-numbered year, and that therefore the ruling was that it could not be submitted at the election for this year because it was not an odd numbered year.

Mr. REED. Mr. Chairman: You will find that it was passed in 1915, and then in 1917, and authorized to be submitted in 1919, and was not in the acts of 1919 at all.

RECONSIDERATION OF VOTE ON SECTION 2 OF ARTICLE IX.

Mr. PEPPER. Mr. Chairman: I move that the vote by which the report of the committee on section 2 of article IX was adopted be reconsidered.

Mr. CARSON. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring.

Will the Committee adopt the report?

EXEMPTION FROM TAXATION LIMITED.

Mr. PEPPER. Mr. Chairman: While that matter was under consideration Judge Fox asked me a question which I, with your permission, sir, will answer. His question related to the closing words of section 1 of article IX as they appear in the present Constitution, relating to the subject of exemption from taxation. The inquiry was, what has become of those words? May I answer, sir, that the report of the committee was adopted by the Committee of the Whole and contained a recommendation that the subject of exemption be treated in a separate section, a new section to be known as section 2, and in the cumulative reprint of the tentative draft I find, on page 129, the section in question there printed in italics.

If this is in order, Mr. Chairman, there is one matter I wish to bring up in connection with this subject of exemption from taxation. It is one of the things that I had in mind when I asked the Chair this morning whether we might take these matters up as we reached this section in course. It will be remembered by all the members of the Commission that at the present time the language of the Constitution which authorizes the exemption of certain properties is this, that "the general assembly may exempt from taxation public properties used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity." I think we are all of us more or less familiar with the judicial interpretations that have been given to the expression "purely public charity." My attention has been called since we acted on this section to a rather curious piece of legislative history which I think we ought to have in our minds before passing finally away from this subject. It seems that prior to the act of 1909 a decision of Judge Endlich was affirmed by the superior court, denying the right of exemption from taxation to Mercersburg College on the ground that as Mercersburg College was efficiently and economically run and showed a surplus of receipts over disbursements at the end of its year it could not be called an institution of purely public charity, since the surplus actually existed, although it was a fact that the surplus was turned back into the operations of the institution to increase its efficiency. Therefore, the legislature in 1909 passed an act declaring that an institution not for profit might be regarded as an institution for purely public charity, notwithstanding that its operations might show a surplus if the fact were that the surplus was turned back into the operations of the institution or into its plant to increase its efficiency. In a decision

by the superior court it was held that this was a permissible legislative interpretation of the Constitution. It could not be said that the legislative interpretation did violence to the Constitution in such fashion as to be itself unconstitutional. Whereupon a subsequent legislature adopted a new act of assembly striking out that legislative interpretation from the act of 1909, restoring the status that existed at the time that Judge Endlich gave his decision. It seems to me that there is great weight in the suggestion that has been made to me by members of the bar that this is an unfortunate condition in which to leave the law of exemption. The effect of it is to penalize the institution which is efficiently run. The theory underlying the situation seems to be that in order to be an institution of purely public charity it must necessarily appear that people are receiving education at less than cost, thus encouraging extravagance and even waste to the extent that it would be profitable to encourage it in order to secure an exemption; whereas the real test of whether the exemption is proper or not seems to me to be this one, whether the receipts of the institution are in fact all applied to its operation or to its equipment for the purpose of increasing its efficiency. If it is not an institution for profit and is otherwise a proper subject for exemption, it seems to me that the exemption ought not to be denied to it merely because it happens to be more efficiently managed than many institutions are. I therefore venture to suggest, Mr. Chairman, that this section which is now numbered section 2 in our tentative draft, section 2 of article IX, be amended by the insertion, after the words "private or corporate profit," the words "property occupied by educational or other institutions which apply all of their receipts to educational purposes and by institutions of purely public charity." So that the section down to the semicolon will read thus: "But the general assembly may by general law exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used for private or corporate profit, property occupied by educational institutions which apply all of their receipts to educational purposes and by institutions of purely public charity." That method of phrasing the section will have in addition to the advantage of substance, which seems to me to be implied in what I have said, also this advantage in form, that it will make the exemption applicable to property and not to the institution. It will be observed that the section in its language as at present provides that there shall be property exemption in all the different cases until you come to the last two and then the exemption is made applicable to the institution. It seems to me that it ought uniformly to be an exemption of property from taxation and that there is some advantage in the phraseology which is involved in my proposed amendment.

Mr. CARSON. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. GORDON. Mr. Chairman: The amendment suggested by Mr. Pepper is introducing an entirely new element into the exemption provision of the tax law. According to this amendment property occupied by any educational institution is exempt from taxation if it is not conducted for profit and all its receipts go into the educational institution and its works. That is a very wide field of exemption. That would exempt any form of institution, no matter what

its propaganda was, or what the nature of its education was. I suppose it would exempt an institution for education in sociology along the line of socialism. It would exempt an institution of a purely religious character where clergymen or teachers of any denomination were educated particularly in the faith of that denomination and had no other relation to education but religious education. It would exempt that. It would exempt all technical institutes. It would exempt all scientific institutions, even though they might be related to some vast scheme of commerce or industry. I shall, so far as I am concerned, declare myself unequivocally against all exemptions except public institutions. If I am obliged to go beyond that, I should only exempt places of actual religious worship or places of sepulture where there was no profit to individuals or corporations. I certainly can see no reason, no political reason, for the exemption of a place of education simply because it is a place of education. There may be a reason if it is charitable, if the work is done not for compensation, not for remuneration, but wholly or in part for charity, this property being an addendum to the educational institutions of the state. The provision of Mr. Pepper, it seems to me, exceeds all bounds of exemption. I cannot see why this exemption should prevail, why any class of educators, no matter what be the form of their education, might not start institutions for their own profit in the sense of the emoluments that they may get for their tuition, and inculcate the doctrine of antagonism to the existing institutions of the state and receive, in turn for it exemption for the property occupied. I might go further in these illustrations to show that the state would thus be subsidizing institutions which had no other element of philanthropy or public benefit in them. I therefore oppose the amendment suggested by Mr. Pepper.

The CHAIRMAN. The Chair would like to call attention to another matter in connection with this. In the county in which I live it is a very serious question. Purely charitable institutions are taking out of the township particularly large tracts of land, are taking them out of the scope or reach of local taxation, throwing the burden of taxation on a continually smaller number of people in the township. Judge Gordon is familiar with it. I represent a charity, and it will take one hundred and twenty-nine acres out of Newtown township, in Delaware county, so that the exemption from taxation is becoming a serious question in the administration of the government of the locality that I live in by reason of the large number of charities that come in.

Mr. PEPPER. Mr. Chairman: I did not mean to re-open the debate on the whole subject of exemption; that was thoroughly debated and a conclusion reached at an early stage of our proceedings. I merely wish to call your attention to the fact that under the constitutional provision as it stands, and as we re-enacted it, there is room for what seems to me to be an unfortunate discrimination against the efficient and thrifty institutions in favor of the inefficient and thriftless, and it was merely to that point that I was addressing myself. I entirely appreciate the great importance of this whole subject, and appreciate the force of what Judge Gordon says on the general subject. It merely seemed to me that if you safeguard the provision by insisting that all the receipts be put back again into the operation of the enterprise, that if you are going to exempt at all,

that is a proper case for exemption; because if you make the criterion the existence or nonexistence of a surplus of receipts over operating expenses, you open the door to the type of discrimination and injustice to which I have referred. I do not wish to provoke great debate upon it, and I shall defer to the judgment of the Commission and withdraw it.

The CHAIRMAN. My only thought about it is that some great educational institution could come up in your territory and buy all the land up to your farm, and then could be exempt from taxation under this provision, and throw the whole burden of taxation on a few of you farmers who diligently pursue your calling in the section of the state that I know you happen to labor in.

Mr. PEPPER. Mr. Chairman: Of course, that brings it home to me, sir, rather pointedly because I am growing fat on the profits of my farm.

The CHAIRMAN. You have not covered it with asphalt.

Mr. PEPPER. Mr. Chairman: I have not covered it with asphalt, but it is true that this privilege can be abused; but it is to be observed that it is merely a power to the general assembly, it is merely an authorization to the general assembly to enact laws on the subject of exemption and in effect it is to say to the general assembly, "When you come to enact laws if you want to exempt institutions of a certain class you will be free to exempt institutions which turn their surplus back into their operations as distinguished from the alleged necessity of subjecting them to taxation." It is merely authority to the general assembly.

Mr. GORDON. Mr. Chairman: As a matter of interest, I would like hurriedly to read some data which was handed to me by my learned colleague from Philadelphia, Mr. Connelly, showing in the county of Philadelphia alone the amount of real estate exempted from taxation under the now existing law. Leaving out all institutions except missions, churches and buildings connected with such church property and Sunday schools, forty-two million dollars; buildings occupied by teachers of parochial schools, places of residence, seven hundred twenty-two thousand dollars; cemeteries, five million dollars; hospitals, eleven million dollars; institutions of learning, twenty-five million dollars; parochial schools and free schools, three million dollars; public charities, thirteen million dollars; property of the United States, thirty-one million dollars; property of the state of Pennsylvania, two million dollars; owned by the city of Philadelphia, one hundred nine million dollars; owned by school districts of Philadelphia, thirty-one million dollars; public libraries, eighty-seven million dollars; quasi-public corporations, five million dollars; elevated railroads, one million dollars; total exemption of property two hundred eighty-four million three hundred thirty-eight thousand dollars.

Mr. CARSON. No wonder they put it all on the seventh, eighth and ninth wards.

On the question recurring,

Will the Committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the Committee adopt the report?

It was adopted.

ARTICLE IX, SECTION 1.

TAXES TO BE UNIFORM.

The CHAIRMAN. The Chair is now in position to clear up the situation with reference to the constitutional amendment covered in section 1 of article IX. The Attorney General's department gave an opinion to the Secretary of the Commonwealth that because of the fact that the Constitution provides that constitutional amendments must be submitted at a general election, the provisions of the joint resolution requiring the submission of this amendment at the election of 1919 could not be complied with for the reason that the election of 1919 was not a general election. Therefore the resolution was not submitted to the voters of the state and the resolution failed. It will not come up at the election of 1920 because there is no provision in the joint resolution warranting publication of it for the submission to the voters in 1920.

On the question recurring,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: Then we are in this position: The committee acted under a misapprehension in supposing that this question would be submitted to the people for decision and we should have the light of popular judgment before us.

The CHAIRMAN. The joint resolution was, as I said, that the proposed amendment should be submitted to the qualified electors of the state at a general election to be held on the Tuesday following the first Monday of November in the year 1919, but as that was a municipal election and as the constitutional provision can only be submitted at a general election, the opinion of the Attorney General's department was that the amendment could not be submitted, and the amendment was not submitted to the people at the election of 1919.

Mr. PEPPER. Mr. Chairman: I was about to say then that we are in this proposition; that the committee under the mistaken impression that we should have the light of popular judgment on this matter before final action upon the draft of a new Constitution reported it out without recommendation. My hope was that it would be inserted in the tentative draft if only for the purpose of showing that we had taken cognizance of what in the view of the legislature seemed to be a popular concern. Now, however, we are advised to the effect that this matter will not be passed upon by the people next November. It will therefore not be passed upon at all unless and until we bring it up for decision by proposing it, and therefore the question before the Committee of the Whole is of even more importance than we had anticipated. We are deciding in effect now whether or not to give the legislature the power of laying graded and progressive taxes. I entirely concur in what Judge Reed has said that there exists already the power to lay an income tax. I think, however, it has been decided in Cope's Estate and in other cases that an inheritance tax, whether direct or collateral, that contains an exemption is unconstitutional, and I suppose it would be decided under the present Constitution that any tax containing an exemption of property or income below a certain amount of value would be unconstitutional. Of course, it would be decided that a tax of any sort which increased in percentage as the thing upon which it

was created increased in value or magnitude would be unconstitutional. Now, I have the impression that we would be making a mistake if we do not confer upon the legislature the power to adapt taxation to the ability of the taxable to pay. I do not think that I am more hungry to pay taxes than other people are. I am not at all in favor of loading the burdens of taxation upon a small percentage of the people of the community, but I somehow have the feeling that it is not a sound governmental principle to make it impossible for the general assembly to levy taxes and make them progressive simply because we anticipate that the power might be abused. I think the power of the sovereign in the matter of taxation is one of those great powers of sovereignty which must be entrusted to the legislature, with only that correction which comes from the courts when in particular cases they are of the opinion that that which is called taxation amounts really to confiscation. I think it is a dangerous thing to insist at this stage of social development that the legislature should not have the power of adapting the tax-burden to the strength of the shoulders upon which it is cast.

Mr. REED. Mr. Chairman: The policy of the state of Pennsylvania within my recollection has been to insist upon uniformity of taxation. The supreme court has said in several cases that it would be a violation of all the principles on which the government of this state was founded to tax a man because of his ability to pay. His property should be taxed at the same rate as that of his poorer or richer neighbor. I have no objection, of course, if Mr. Pepper could word it to a minimum exemption such as would fit the case of Cope's Estate, or in the case of inheritance tax that there will be a minimum of five thousand, two thousand, or whatever you please, which should not be taxed; but to say in this state, and put our stamp of approval upon a proposition which is a practical confiscation, to which there is no limit, when the state does not need it, when the state has yet undeveloped resources of taxation which have not been called upon, seems to me a dangerous expedient and I simply say, simply in explanation, that it is not well to limit the legislature.

The object on the part of the Constitution of 1873 was intended to limit the legislature. Now, we know, and I am not including the last speaker in this, we know that the mind of the reformer turns naturally to taxation. The man who can invent a new system of taxation stands higher and higher in the circles of the reformer until he finally reaches that ecstatic realm which the Russian government occupies, in which it takes one hundred per cent and incidentally kills the owner. Now, we have in Pennsylvania the legislative power to levy a straight income tax. Of course, a man with ten thousand dollars income will pay ten times as much as one with one thousand dollars. To that extent it is a progressive and graded tax. If it were a necessity I would not object to it, if it were a necessity that the state of Pennsylvania should have some place to turn for revenue; but we have left, as the Auditor General told the committee the other day, that by applying a more intensive system of reports he could raise possibly eight million dollars more in revenue if it were desired under existing laws. Then you have within reach the straight income tax, which would raise I do not know how much, and you have the inheritance tax, which is already a source of revenue and can be increased if necessary, based upon what might be called a straight

inheritance tax and not progressive. Now, the average citizen is burdened today with taxation. The United States, as we all know, has adopted a progressive tax, an excess-profit tax, a war-profit tax, until business is struggling under it. Why open the door to legislative action, maybe on the impulse of the moment, which will add to the citizens of this state an additional burden in the way of an additional graded tax, when it absolutely is not needed by the state? If it ever comes to the day that the state needs additional revenue and desires to adopt a progressive tax, so that its wealthier citizens will have to pay more and a larger percentage, it is a matter of an amendment which can be passed at that time.

The CHAIRMAN. The Chair within a short time has had rather vividly brought to his attention the state's policy in the matter of taxation. The state's policy has been to exempt manufacturing corporations from taxation in Pennsylvania, and the result of that exemption as between Ohio and Pennsylvania has been that very large manufacturing concerns in Canada have decided to locate with us rather than to go to Ohio, so that the tax exemption has some compensation.

There is nothing before the Committee of the Whole now except possibly Judge Reed's amendment to strike out these words.

Mr. ENGLISH. Mr. Chairman: I should like to ask the chairman of the committee whether it is not the intention of the last clause in the committee's report and carried over into Judge Reed's substitute to establish in Pennsylvania the possibility of what is known as the single tax theory and which, as I understand it, provides for a discriminatory tax for unimproved real estate, or for real estate which cannot be improved, in accordance with whatever legislative standards may be set up. If I do not correctly understand the section, I should like to be informed.

Mr. PEPPER. That is correct, Mr. English. This section was drafted with the thought that the legislature be given the power to enact tax laws that are accordant with any recognized theory of taxation, whether the particular theory was one which met with general agreement or one respecting which there was room for very great difference of opinion. That portion of it which deals with graded or progressive tax was reported without recommendation, and all the rest of it was reported with an affirmative recommendation.

The CHAIRMAN. While our tax system may not be in conformity with that of other states, as we have administered it, this policy has made us a great commonwealth. We have no doubt that the only question is whether it is a wise thing in these days. Another matter that has come to the attention of the Chair is that one of the great captains of industry in Pennsylvania, one whose income has been poured back into the industry except what he spends in his own living, tells me that out of every dollar he made he is only able now to keep for himself nine cents. He pays ninety-one cents of his income in taxes. That was the end of further enterprise with him; it had to be.

Mr. CARSON. Mr. Chairman: I happened to be present some three weeks ago at a session of the bar association of the state of New York, in which this question was very thoroughly and ably discussed by very well-known men. I think I can interpret the sentiment of the majority of the speakers which manifested itself in

very strong approval of what was said that a most serious situation may arise in this country from a too generous concession of power to the legislature to take away the property of the citizens upon what is called a mere exercise of legislative discretion. Chief Justice Marshall, in a very leading case, that of *McCullough* against the state of Maryland, precisely described the power to tax as the power to destroy. There is no limit to it, because it is a sovereign power, and in order to save the institutions, in that case the banks of the United States, from being taxed out of existence by a state, the state of Maryland, denied to the state the power to tax Federal agencies of government. Now, we have the reverse side of the picture, and the situation is really becoming one of serious import. These graded and progressive taxes have been carried to such an extent that at the present time the Federal government takes a maximum of seventy per cent of alleged income, and is not careful in the assessment of the tax, or in the exercise of the powers which are employed by the collector of internal revenue, to discriminate between capital and income. They are insisting that everything that comes in the shape of money, that comes into the hands of the citizen during the year, even if it results from the sale of a piece of property of his, if it is at an advance in value over what it was worth in 1913, in March, when the income tax went into effect, or whether it has been carried forward on his books for a long period of time, if there is an excess, they say practically there is no distinction between capital and income; you received the money, it came into your pocket, ergo, it is income, and you must surrender the proportion which we exact. Fortunately the only sign of hope is in the recent decision of the Supreme Court of the United States, as I recall, in 247 U. S., where the supreme court has reaffirmed the principle announced by Mr. Justice Field, under the income tax laws of 1861, 1862 and 1863, that the legislature had no right to obliterate the distinction between capital and income, that if a citizen parted with his capital which when he held it was not subject to the tax, but which when sold had merely changed its form by going into another kind of property, that was an accession of capital, and not until that accession was reinvested and produced an income, could it be regarded as a proper subject for taxation. But the tax-collecting agents of the government disregard all laws, they sweep decisions aside, and demand the throwing open of your books to inspection of the profit that has been made on the capital account and exact payment, which you have to put up in cash, guarded solely by protest against the payment and then sue the collector for the recovery, with the delays and uncertainties as to whether or not it will ripen into such a judgement that without the aid of Congress you can ever get your money back. Now, it merely means this: We in this country are subject to triple, if not quadruple, forms of taxation, and from different kinds of agencies. We are taxed by the United States, we are taxed by the state, we are taxed by the county, we are taxed by the townships, and if you happen to own rural property there are road taxes, dog taxes and school taxes, and matters of that sort. We are perilously near the exhaustion of our capital. Now, in a few years the citizen's capital can be largely taken away from him and he will be thrown on his own exertions, and then what incentive is there for further exertion? We must consider that there comes a point when resources, which do not consist only of physical

property, but consist of energy and ambition in addition to determination to apply the best powers of the brain to the affairs of human nature, that some great enterprise for the advantage of the human race, either commercially, intellectually, morally or artistically, can be carried, will fail unless a great genius of finance has the means within his power to gather up motive force, all our energies practically become reduced to a dead level, and we will drop back into a state of socialism or infirmity, which is not a state, but which is obliteration of all the vast greatness which made us conspicuous. If this power, as testified to by the Auditor General, is absolutely unnecessary, why confer it? Why put it in the hands of the legislature, which may some time suddenly acquire a mania for raising taxes under an idea that somebody's shoulders are strong enough, great enough and broad enough to bear the burden? That is not equality nor uniformity, that is not Americanism. As Judge Reed has said, if the tax were ten per cent, or twenty per cent, or thirty per cent, the man of large means, worth a million dollars, would have to pay thirty thousand dollars; the man of a thousand-dollar income would have to pay three hundred dollars. Well, that is uniform taxation. It is a distribution of burdens in proportion to the ability of the citizen to carry it. To put sixty-seven or seventy-five per cent on one man and only ten per cent on another is not equality of treatment before the law. It is a confiscation of property, and ought not be permitted to go to such an extent that a judge shudders on the bench when saying, "You could not on the highway assault a rich citizen in his automobile and say deliver over your purse, if you happen to carry a fat one. That would be highway robbery; but, under the guise of law, we will tolerate this thing, unless it goes to such a point of extreme confiscation that our consciences are shocked and our own safety is imperiled, and we act in self-defense in striking down the law." It ought not to go that far; it is extreme, it is extravagant, and it is wrong. That is the way I feel about it, sir.

Mr. STACKPOLE. Mr. Chairman: Just a word. It occurs to me that there is nothing now before the Commission so important as the matter of taxation. There can be nothing more important in view of the times through which we are passing. I feel that to give the legislature any further power along that line might be unwise, because the legislature is composed of human beings, subject to human traits, and frailties, and temptations. I agree with Mr. Carson, that such a change would give the legislature power that might result in most burdensome taxation through pressure from outside sources, owing to new projects, great demands for funds. This state has grown great through its constructive policy of taxation. We have encouraged great industries, and our manufacturing development has been along most marvelous lines. We have encouraged capital to come in here and develop our wonderful resources, and now to take any step which might lead to a driving out of these industries would be most unfortunate and lead to a decadence here in this commonwealth which no one wants to see. Further taxation may result, as I see it, in absolute destruction of initiative and of energy and, I was going to say, almost confiscation so far as business is concerned. We are adding a burden beyond measure, not only by taxation, but by regulation and by everything which has a tendency to destroy that punch, if I may so term it, which is necessary to an

increasing development of a great industrial state. I trust that in our further deliberations on this matter we may avoid throwing open the door to unnecessary taxation. As Judge Reed has suggested, and as was brought out in our committee, our present system of taxation is ample to provide all the funds that can reasonably be needed for further development during the next few years. Now, above all times, this is not the time, as I understand it, as I see it, to throw open the doors to the placing of further burdens on the people. In Germany, in 1911, I was told that the average tax on the average citizen was about sixty-seven per cent; that the people there were becoming restive, and they declare, in the light of what has happened since, that the great war was forced upon an unsuspecting world because the people of Germany were ready for revolution, and unless there was something to ease that pressure through a grabbing of the whole world, Germans would fight their own monarch and destroy the constant increase of taxation in that country. Now, we do not want—I do not even suggest it—but we do not want to drive the people of Pennsylvania to the point of revolution by imposing unnecessary taxation.

Mr. ENGLISH. Mr. Chairman: If it is in order, sir, I should like to move that section 1 of article IX as it appears in the Constitution of 1873, on page 51 of the Compilation, be substituted for both the report of the committee and the amendment of Judge Reed.

Mr. CONNELLY. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. REED. Mr. Chairman: The second part of that first section has already been turned into section 2; it should be the first sentence that Mr. English means, I believe.

Mr. ENGLISH. Mr. Chairman: I would be very glad to accept the suggestion. I defer to the suggestion of Judge Reed to strike out the part included in section 2, already adopted.

The CHAIRMAN. So that the substitute will make it read how?

Mr. ENGLISH. Mr. Chairman: "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." As I understand it, the rest of it has gone into section 2.

Mr. REED. Mr. Chairman: The rest of it has gone into section 2.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

ARTICLE XIV, SECTION 7.

The CHAIRMAN. The next section in order for consideration is section 7 of article XIV of the Constitution, this section having been restored to the calendar.

The Secretary read the section as follows:

Section 7. Three county commissioners and three county auditors shall be elected in each county where such officers are chosen in the year one thousand nine hundred and twenty-three; one for two years; and two for four years; and every two years thereafter one and two alternately for four years; and in the election of said officers each qualified elector shall vote for one person; any casual vacancy in the office of county commissioner or county auditor shall be filled by the court of com-

mon pleas of the county in which said vacancy shall occur, by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled.

On the question,

Will the Committee adopt the report?

COUNTY COMMISSIONERS AND AUDITORS.

Mr. MUNCE. Mr. Chairman: The suggestion that I made was that instead of saying the filling of a vacancy shall be made by the party who shall have voted for the commissioner or auditor, it should be, the vacancy shall be filled from the party from which he was elected, and I offer that as an amendment.

The CHAIRMAN. So that it will read how?

Mr. MUNCE. Mr. Chairman: So that it reads this way:

"Three county commissioners and three county auditors shall be elected in each county where said officers are chosen in the year one thousand nine hundred and twenty-three; one for two years; one for four years; and one for six years; and every two years thereafter one for six years; and in the election of said officers each qualified elector shall vote for one person, and the person having the highest number of votes shall be elected for the term of six years; any casual vacancy in the office of county commissioner or county auditor shall be filled by the court of common pleas of the county in which such vacancy shall occur, by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled."

Mr. REED. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. FISHER. Mr. Chairman: In case of the removal then of a board of commissioners for misconduct, which is entirely possible under the Constitution, how would you fill the vacancy? We are now again running counter to the work we did yesterday.

The CHAIRMAN. I do not quite catch the gentleman's thought.

Mr. FISHER. Mr. Chairman: The amendment of Mr. Munce, as I understand it, is to the effect that in case of a vacancy, that the vacancy shall be filled by the other members of the board.

The CHAIRMAN. Oh, no; the vacancy shall be filled by the appointment of an elector from the proper county, who shall be one of the same political party.

Mr. FISHER. Mr. Chairman: I misapprehended it. I did not see clearly what the amendment was, but thought that Mr. Munce had been moved by the spirit of exalted principle which has been leading us to take away from the courts the appointive power. Now, then, as this amendment stands, it is that the court is authorized to fill vacancies when they occur, which is in violation of our principles.

Mr. ENGLISH. Mr. Chairman: I greatly wish to join with Senator Fisher and Judge Fox in pointing out to the other members of the Commission that this is only one of the many difficulties that will stand in the way of the action that was taken yesterday, and to emphasize the thought that, when the matter comes up again for consideration, a change should not be made unless there is a very pronounced demand on the part of the so-called country districts

that the nonjudicial appointing power of the court shall not be interfered with.

Mr. MUNCE. Mr. Chairman: At the time this was drawn the difficulty had not been brought up of the appointive power of the court and we did not anticipate that trouble. I still hope that when we settle that point it can be settled so that if this condition of affairs might arise it would be taken care of properly without any conflict. I do hope, as I said before, that this amendment will prevail for the reason that I do not think that there is anything that the Commission will be called to act upon in the state that is more far-reaching than the matter of the county commissioners and their power and their supposed authority as the condition of affairs exists today. I am anxious that the amendment be adopted.

The CHAIRMAN. The Chair understands that the gentleman has himself been a county commissioner.

Mr. TYSON. Mr. Chairman: I strongly favor the amendment. The question occurs to me, however, in the change proposed in the last line, that in a long term of six years it might be conceivable that a political party in existence at the time of the election of the commissioners would not be in existence at the time the vacancy had to be filled. Such a thing is not probable, but in a matter of this kind going into our Constitution it seems to me it might be possible.

Mr. ALTER. Mr. Chairman: The suggestion made by the gentleman from Adams is quite in point. We have had political parties rise up and select a good many officers. Six years afterward you could not find anybody willing to admit having been a member. The present provision has made no difficulty that I know of in the years that it has been in force. The amendment offered by Mr. Munce covers the whole section. Therefore, I apprehend the only way before us is to offer an amendment to the amendment. I would offer to amend by striking out the words "court of common pleas in the county in which said vacancy shall occur" and substitute therefor the words "the Governor." The Governor now appoints the prothonotary and clerk of courts and various others in cases of vacancies, and it is quite appropriate that he should appoint the county commissioners, and thereby avoid the feeling of impropriety which burdens the mind of my friend from Indiana.

Mr. TYSON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the Committee agree to the amendment as amended?

Mr. ALTER. Mr. Chairman: I would like to offer a further amendment. When this section was up on the seventh of January there was quite a good deal of discussion and the section was finally put in form which seemed to be satisfactory to every one except those who were opposed to minority representation and those who were strongly for a six-year term. Then I noticed that two or three weeks ago the section came up and apparently without any discussion of this point it was restored to the form in which it appeared in the Constitution of 1873. When it was before us on the seventh of January I offered an amendment which was adopted, and I desire to offer it now to the section as proposed by Mr. Munce. The amendment was that the section, the first part of the section, shall read as follows: "Three county commissioners and three county auditors

shall be elected in each county where such officers are chosen in the year one thousand nine hundred and twenty-three, one for two years and two for four years; and every two years thereafter one and two alternately for four years; and in the election of said officers for a four-year term each qualified voter shall vote for one person; any casual vacancy in the office of county commissioner or county auditor shall be filled by the Governor by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled."

Mr. PEPPER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

The CHAIRMAN. Then we have the provision also as to the amendment that has already been made.

Mr. REED. Mr. Chairman: Will you ask the gentleman if he is not running a little close to 1923?

The CHAIRMAN. That can be changed in the schedule.

Mr. ALTER. Nineteen twenty-three will be the next year in which county commissioners and county auditors may be elected.

Mr. REED. I know, but this provision may not be effective.

Mr. ALTER. I am taking the chance as I find it in that respect. It is the way it is proposed by Mr. Munce. Now, the section as proposed here by Mr. Munce provides that in the event of a vacancy the vacancy shall be filled by the appointment of a member of the same political party as the one who had formerly filled the office. That emphasizes the principle of minority representation. That is what it is for. We discussed the question of minority representation pretty fully on the seventh of January, and I am fully convinced that if there is any office anywhere outside of the election board in which it is important that minority representation be preserved it is in the office of county commissioner. Not only do the county commissioners constitute the returning board on all primary elections, but in general elections it is the county commissioners who make preparations for the election. They have the ballots printed, they procure the place where the election shall be held, they provide the election booths, they have printed and sent out the instructions to electors, instructions to the election boards, and attend to everything connected with the election, and the board of county commissioners would be able, if they saw fit, to take very great advantages in various ways that might be suggested to the gentlemen who have had practical experience with political affairs. So much for the principle of minority representation. The main thought that Mr. Munce has in his mind, and which is certainly a wise thought, is that the three county commissioners should not all go out at the same time and perhaps an entirely new board, without any experience in the office, without any familiarity with the enterprises which were being carried on, come in all at one time. The office of county commissioner has become a more important office in the last few years than it ever was before. It always was a very important office; it is now an extremely important office, and it surely is desirable that there should not be a complete change in the personnel of the office at any time. In school boards the law provides that only a part of the board can go out of office at any one time; the same way in the borough council, and the same way in the city council, and in various other boards. But in this most important board the present provision of the Constitution permits the whole

board to go out and an entirely new board of inexperienced men to come in at one time. Therefore, I entirely agree with what Mr. Munce seeks to accomplish. That will be accomplished in the way I propose because there will always be one or two members holding over. At the same time under the amendment which I have proposed the principle of minority representation will be preserved.

Mr. MUNCE. Mr. Chairman: In regard to this matter, I do not want to appear to be too tenacious about it. I am, as Mr. Alter says, only anxious that something shall be done in regard to this matter to put it on a business basis. It is not, as I look at it, on a business basis. I may possibly have overlooked the importance of having minority representation, but I do not think I do; but I admit that it may be important. The reason that I proposed this amendment was to allow the party that was holding the office to have one of the same party appointed again. I am not particular about that. I was not enough of a mind-reader to see what was going to happen; but another objection has been raised by someone, that by this plan every two years you are stirring up in the community an election campaign for county officers. It was with that thought in view, to get rid of that campaign trouble, this disruption or inconvenience, that I was insisting on the term being for six years instead of four years. Now, there has been suggested also by some I talked to that the office should not be extended over more than two terms. That would give a man a twelve-year term instead of a six-year term instead of continuing an officer perpetually after that. I think it has happened in townships a great many times. I have noticed it has been the fact that good men would not accept the office of county commissioner because the term was so short that they had to abandon, as they put it, their own business for a competence that was not at all attractive to them and they could not serve even if it were possible over four years. With that in mind I thought about extending the term and making it at least partly worth while for better men to accept the office of county commissioner, being as important as it is, although I think the amendment as proposed by Mr. Alter would be decidedly better than what we are doing now; yet I think some arrangement could be made by which we could have one or two members hold over from time to time rather than passing them all out at the same time and have a new set of men in at the same time. But I do still feel that the better plan, if it could be arranged, is to have the longer term of office.

Mr. TYSON. Mr. Chairman: I hope that the amendment of Mr. Alter will not prevail. I feel very strongly that one of the best features of Mr. Munce's proposition is the long term of office of county commissioners, as it works out particularly in the country districts where the road plans and many of the other progressive movements that we are looking forward to must be handled by the county commissioners. It frequently develops that such work is only started when a change takes place. I was impressed more particularly by that thought in this feature of the proposal than any other. I feel that it is possible that we may put too much weight on the advantage of minority representation. As I have observed the working out of minority representation, it results in little more than a knowledge of what is going on on the part of the minority which, of course, is

available whether a minority representation exists or not. I should be glad to see the amendment as it is proposed by Mr. Munce prevail.

Mr. GORDON. Mr. Chairman: I want to acknowledge that I have been led into the light by Mr. Alter and converted on the subject of minority representation. I was opposed to it when it was last before this body. It did not occur to me that the county commissioners were the returning board, that they canvassed the results of the election. I remember last September when the primary vote for mayor in the city of Philadelphia was to be canvassed the difference between the two leading candidates was about thirteen hundred. There was the greatest apprehension as to what would be the result if the canvass of that vote fell into the hands of the county commissioners. Fortunately it was ruled that by reason of the fact that one or more of those commissioners was himself a candidate at that election he was disqualified, the board was disqualified from counting the vote, and therefore it fell to the lot of the judges. An extremely nice question arose before the court—I happened to be professionally engaged for the candidate who got the certificate—and it would have been the easiest thing in the world for three laymen, the county commissioners, to have ruled differently from what the judges did, and if they had the result of that vote might have been very different. But the canvassing board is quite different from the election board, and there ought to be a representation of the minority on such board. The county commissioners now prepare the return sheets and the ballots and all of the various paraphernalia of election, and afterwards in many cases count the vote; they open the boxes or refuse to open boxes; they may make a scrutiny of the returns or refuse to make a scrutiny of the returns, and have great power with respect to the result of the election. I think it would carry out the spirit of this Constitution in all fairness if we would have a minority representation on this board. I would like to make acknowledgment to the gentleman from Allegheny of the great benefit he has been to me in this respect.

Mr. FISHER. Mr. Chairman: It seems to me that if the proposal of Mr. Munce is adopted it will be impossible to retain a minority representation where one member is elected at a time. Of course, the dominant party will ultimately come into control, full control, of the board of commissioners, and if we are to incorporate in this section the thought that the minority shall be represented I think then we should adopt the substitute offered by the gentleman from Allegheny, Mr. Alter. When we were debating this before I took the position that the minority should be represented. I have not been injured at all in my feelings that Mr. Alter has been given the credit for that work of generosity toward the minority party. But I am clearer now, due to the reasons and searching details presented by Mr. Alter, that we should not overturn the idea of minority representation on the board of commissioners. The other matter that gave me concern when this was up for discussion before was the danger, if we adopted this six-year term which was to be filled by election of one member every two years, of perpetuating the board of commissioners. It seems to me it would be quite easy for the two commissioners remaining undisturbed by the election to control the election for the vacancy. It is very easy to understand that when

three men are associated in an office of this kind they may get to working together in such a harmonious way and so adopt uniform policies that they would not want to have their plans disturbed. The commissioners' office is very important, not only on account of the reasons that have been presented, but from the fact that they are going to have such a potential part in the construction of highways in the state. Already there has been voted into the hands of the boards of county commissioners in the state twenty-five or thirty million dollars of bonds by the several counties to be disbursed in the construction of roads. Now, Mr. Munce will say that that is an argument why there should be a longer term, and why there should be increased experience. But on the other hand, if you do that you remove the office from direct contact with the popular will. How long are the commissioners to be in office until they are called to account by the electorate of their county? Now, it seems to me that it is a fair compromise if we provide here a method whereby there shall always be one or two experienced men on the board and then allow them to be accountable to the people at an election every four years, and not every six years. If they have been faithful stewards, if they have performed their duties in a way that meets with the approval of their county, there is little doubt but that they will be retained in office. If they have not administered their office with fidelity and capacity, then the people ought to have a chance with more frequency than every six years to say that they have been unfaithful stewards and that a change should be made in this important office. I therefore favor the substitute of Mr. Alter.

On the question recurring,

Will the Committee agree to the amendment by Mr. Alter?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

It was adopted.

The CHAIRMAN. The Chair has cleared up the preliminary calendar except some further amendments which I think we can dispose of quite rapidly before lunch.

ARTICLE III, SECTION 3.

The CHAIRMAN. The next section in order for consideration is section 3 of article III of the Constitution, presented by Mr. Alter.

The Secretary read the section as follows:

No bill, except general appropriation bills and codifications, compilations and general revisions of existing statutory laws, shall be passed containing more than one subject, which shall be clearly expressed in its title. Any law may in the body thereof set forth a short title by which it may be cited. A law amending, reviving or extending a law shall set forth in its title the title or the short title of the law affected.

On the question,

Will the Committee adopt the section?

It was adopted.

ARTICLE III, SECTION 6.

The CHAIRMAN. The next section in order for consideration is section 6 of article III of the Constitution, presented by Mr. Alter.

The Secretary read the section as follows:

Section 6. A law amending, reviving or extending the provisions of the law shall set forth in full the part of the law affected, and an amending law shall also set forth in full the part of the law affected as amended.

On the question,

Will the Committee adopt the section?

It was adopted.

ARTICLE V, SECTION 24.

The CHAIRMAN. We will now resume the consideration of section 24 of article V of the Constitution, the report of Committee No. 2 being that this section shall be amended.

The Secretary read the section as follows:

Section 24. In all cases of felonious homicide and in all other cases to be provided for by law, the accused after conviction and sentence may remove the indictment, record and all proceedings to the supreme court for review.

On the question,

Will the Committee adopt the report?

Mr. CARSON. Mr. Chairman: On behalf of Committee No. 2, I offer the following substitute for section 24 of article V.

The Secretary read the substitute as follows:

Section 24. In all cases of felonious homicide, the accused after conviction and sentence may remove the indictment, record and all proceedings to the supreme court for review, and in such other criminal cases as may be provided for by law the accused after conviction and sentence may remove the indictment, record and proceedings to either the superior or supreme court for review as the general assembly may provide.

On the question,

Will the Committee adopt the substitute?

It was adopted.

ARTICLE V, SECTION 18.

The CHAIRMAN. The next subject in order for consideration is an amendment to section 18 of article V of the Constitution, presented by Mr. Fox.

The Secretary read the amendment as follows:

Amend section 18 of article V by inserting after the word "compensation" in the sixth line, the following: "which may be increased at any time but not diminished during the term for which a justice or judge shall have been appointed or elected. This compensation shall be fixed by law and paid by the state."

On the question,

Will the Committee agree to the amendment?

It was agreed to.

ARTICLE V, SECTION 22.

The CHAIRMAN. The next subject in order for consideration is

an amendment to section 22 of article V of the Constitution, presented by Mr. Carson.

The Secretary read the amendment as follows:

Section 22. Strike out "in every county where a separate orphans' court is established it shall possess all the powers and jurisdictions of the register's court, and separate registers' courts are hereby abolished." and insert in lieu thereof, "the orphans' court shall have such jurisdiction as is now or may hereafter be provided by law."

On the question,

Will the Committee agree to the amendment?

It was agreed to.

RECONSIDERATION OF VOTE ON SECTION 7 OF ARTICLE XVI.

Mr. PEPPER. Mr. Chairman: I move that the vote by which section 7 of article XVI was adopted be reconsidered.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the Committee adopt the report?

STOCKS AND BONDS.

Mr. PEPPER. Mr. Chairman: I have a resolution to offer which I think will occasion no debate. It will be remembered that the Committee of the Whole approved a proposal which among other things authorized the issuance of stock below par by corporations under certain circumstances. It was my thought in advocating the measure which prevailed that it was sufficiently clear that nothing in that section as adopted would displace the right of the state to regulate the stock issues of public service corporations. On thinking the language over and reading the section as it finally passed I came to the conclusion that whether or not that view is correct at least the point ought to be safeguarded in such a way as to meet the very urgent considerations that were pressed upon the Committee of the Whole by Judge Gordon when the matter was under debate, and the resolution that I have now to offer is to amend section 7 of article XVI by inserting such words that when amended the clause of the section in question will read thus: "but subject to such provisions respecting public notice as may be made by the general assembly, and subject to the power of the general assembly directly or through an executive agency to regulate issues of stock of public service companies, a corporation may."

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

The CHAIRMAN. Is there any objection to changing the word "executive" to "administrative" because that is what the supreme court has called the Public Service Commission?

Mr. PEPPER. I think that is all right, sir, and with your permission I will substitute the word "administrative" for the word "executive."

On the question recurring,
Will the Committee agree to the amendment?
It was agreed to.
On the question,
Will the Committee adopt the section as amended?
It was adopted.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported progress.

EXCISE TAXES.

Mr. PEPPER. Mr. Chairman: May I claim your attention for a moment? We have passed away from the consideration of article IX, but I think I am right that the calendar carries us to a subsequent section.

The CHAIRMAN. Yes we have completed this regular calendar, but I have a temporary calendar made up this morning. Whatever you have to suggest I will receive now.

Mr. PEPPER. Mr. Chairman: One of the problems that came before Committee No. 4 in connection with taxation was the problem that was discussed by the supreme court in the case in which it was decided that the tax on anthracite coal tonnage was unconstitutional for the various reasons given by the court. It seems to me that some greater emphasis should be placed upon the power of the legislature to classify for purposes of taxation, and that was one of the thoughts underlying the portion of the section which has now been eliminated as a result of Mr. English's amendment. We are, therefore, facing this situation: We have not considered the propriety of giving specific authority to the legislature to lay the form of tax for which sufficient authority was found not to be contained in the Constitution as it stands when the anthracite tonnage tax came before the supreme court. In order that the matter may come before us for consideration and disposition, I move your, sir, that the following be placed on the calendar and be considered as a section to article IX, to become new section 2-A following section 1, which has been retained in substance in its present form and in advance of the section dealing with the subject of exemption: "Excise taxes may be imposed upon the business of severing a mineral product from the soil, and such taxes may be measured according to the quantity, nature, use or value of the severed product. The general assembly may in its discretion apply all or part of the proceeds of such tax to the relief of persons or communities injuriously affected by the conduct of the business so taxed."

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The proposed amendment will lie over for type-writing and will come up on the calendar this afternoon.

NEW SECTION PROVIDING TAX OFFICE.

Mr. KELLY. Mr. Chairman: In connection with this subject of taxation I would like to also propose the following as an amendment and a new section, and move that it be placed upon the calendar:

"The legislature shall provide that taxpayers may pay all taxes at one office in each municipality."

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,,

Will the Commission agree to the motion?

Mr. KELLY. Mr. Chairman: I rather think, of course, that the legislature has the power to so provide under the present Constitution. I am not quite sure whether other communities are laboring under the same disadvantages that we do in the city of Scranton, so I bring this to the attention of the Commission to see if it is of sufficient importance to be incorporated in the fundamental law of the state. County taxes are paid in the courthouse; city and school taxes are paid in the city hall; poor taxes are also paid in the city hall but at another place from the place where city and school taxes are paid, because there are different collectors for the state and poor taxes and the county taxes. It is a source of great inconvenience as well as confusion, and people are more or less ignorant on the particular subject of paying taxes. Women, if you please, of ordinary intelligence who go to one place or the other to pay their taxes, pay all that are accepted from her or him, as the case may be, and later on discover that there are unpaid taxes. It is an inconvenience which the voters of the borough do not labor under because they have a tax-collector in each borough who collects all the tax. Now, if there are other cities or communities in the commonwealth laboring under the same inconvenience as this which we labor under, it seems to me it may be worth while to incorporate in this proposed Constitution a provision that all taxes may be paid at one office, so that there shall be no confusion and so that people shall not be put to inconvenience in going from one building and from one place to another in attempting to pay the taxes which he or she may owe.

Mr. STACKPOLE. Mr. Chairman: Judge Kelly will probably recall that during the last two or three sessions of the legislature bills were introduced providing for a receiver of taxes in cities of the second and third classes. A delegation came here and swatted that proposition so that it never got out further than the committee, and I think we all agree with Judge Kelly that it is an evil in the cities of the third class, and I think in the lesser communities. He did not mention one thing that follows the present system. The collectors of taxes, for instance, find it convenient perhaps to forget to collect within the time that the abatement may be allowed and then they impose the burden of a penalty upon the taxpayer and continue a most onerous system for their own purposes, doubtless their own profit. If this Commission can do anything to establish such an office then you will accomplish a great thing. If anything can be done to provide a receiver of taxes in third class cities and all cities and towns and boroughs, then this Constitutional Commission will have accomplished a fine thing for thousands of people. As it is today the collection of taxes in cities of the third class is, as Judge Kelly has indicated, in the hands of several officials, and in Harrisburg recently the retiring city treasurer started collecting the one dollar occupational tax as a sort of residue of his income. So that it seems to me if the Commission can do anything by way of creating

such an office as receiver of taxes it will have done something worth while.

On the question recurring,

Will the Commission agree to the motion?

It was agreed to.

The CHAIRMAN. The proposed amendment will be prepared for the use of the members and will go on the calendar this afternoon.

RECESS.

Mrs. Warburton. Mr. Chairman: I move the Commission now take a recess until 2.30 o'clock this afternoon.

Mrs. Miller. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1.05 o'clock P. M., the Commission took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2.30 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Commission having arrived, the Commission will be in order.

COMMITTEE OF THE WHOLE.

The Commission then resolved itself into the Committee of the Whole, William I. Schaffer, Chairman.

ARTICLE IX, SECTION 2-A.

The CHAIRMAN. The next section in order for consideration is section 2-A of article IX of the Constitution, proposed by Mr. Pepper.

The Secretary read the proposed section as follows:

Section 2-A. Excise taxes may be imposed upon the business of severing a mineral product from the soil, and such taxes may be measured according to the quantity, nature, use or value of the severed products. The general assembly may in its discretion apply all or part of the proceeds of such a tax to the relief of persons or communities injuriously affected by the conduct of the business so taxed.

On the question,

Will the Committee agree to the section?

EXCISE TAXES.

Mr. Kelly. Mr. Chairman: I would like to say a word in favor of this amendment. It is one that the people of the anthracite regions are particularly interested in. Perhaps there may be some interest also in the bituminous region, because under the language of this amendment the remedy to be sought would apply as well in the bituminous coal region as in the anthracite. I think the situation is not as acute in the bituminous region at the present time, but there is hardly any doubt that the time will come when it may become so, when it would be an advantage to that region, as well as to the anthracite region, to have some such provision as this in the Constitution. As Mr. Pepper said when he introduced the amendment, it was thought of and prepared with a view of covering the situation which arose on a tonnage tax bill which passed the legis-

lature and which was in force for a time, and which was finally declared to be unconstitutional on the main ground, I may say, that it was a classification as between bituminous and anthracite coal which was not justified. The suggestion I think was also made in the opinion of the supreme court that it might possibly come in conflict with that clause of the Constitution which forbids appropriations to individuals or communities. In the region where I come from there is considerable difficulty with mine caves in those mining communities. Many times the owner of the surface is not the owner of the coal; many times the owner of the coal, in fact, in some instances, the owner or owners of the coal, not only own the coal, but they have the right by contract to take it out regardless of the damage to the surface or to the improvements upon the surface. It would not be my thought that this Commission should do anything which would deprive the owners of the coal of the benefit of their ownership or their full right to take out the coal regardless of surface damages where they have bought and paid for that right. In other words, I would not have it in mind that this Commission should do anything that would unduly interfere with vested property rights, but under this bill which had been passed, and which if it had remained on the statute books, a great measure of relief might have been afforded. The community lost the benefit of it by reason of the constitutional objection. This amendment is offered for the purpose of meeting that constitutional objection so as to enable the legislature if, in its wisdom, it sees fit to re-enact such a bill or similar bill, to have it sustained by the courts of the commonwealth.

Mr. PEPPER. Mr. Chairman: I think it ought to be clear to all the members of the Commission just what the implication of this measure may be. It is probably known to all of us that the owners of the mining rights have acquired the right to take all the coal from under a given area, and that the owners of the surface have lost the right to insist upon subterranean support by virtue of releases of the right of support which are found in the chain of title of the coal companies. People become the owners of the surface, build structures of one sort or another, private or public as the case may be, and then the safety of the surface is menaced by the subsidence caused by the removal of the supporting pillars of coal at varying depths below the ground. I happened to represent a school district in Scranton whose schoolhouses were made dangerous and useless by the subsidence of the surface. I attempted to get away from the release in the chain of title under which the school district claimed by the contention that the destruction of the surface support was a thing which the state had a right to stop in the exercise of its police powers, irrespective of the private authorization given to remove the support, and because a public calamity was threatened; that the police power of the state in the premises might be exercised as well by the court through a writ of injunction as by an act of assembly forbidding removal of the barriers or pillars in the interest of public safety. The court decided that that position was not tenable; decided that if the police power was to be exercised by the state, it must be exercised through the legislature and not through the courts. That decision is either right or wrong, but it stands. Then the situation was sought to be dealt with through the imposition of a tax on the mining of the coal in the anthracite coal

regions, with a provision that some of the proceeds of the coal tax should be returnable to the communities for the relief of the individuals and communities injuriously affected by the prosecution of coal mining under these conditions. That, as Judge Kelly has explained, was declared unconstitutional. I am particularly anxious to make this point clear, because in the litigation I represented the owners of the surface, and I should not like to be put in the position of advocating before this Commission a measure in the interest of surface owners which was inimical to the best interests of the workers below the surface unless the facts are made abundantly clear. Now, it may be contended by the coal companies that since it has been decided that they have a vested right to remove these pillars of coal, come what may, a tax upon the business of mining coal, which must either come out of their pockets or out of the pockets of the consumer through an increase of the price per ton, is an indirect way of depriving them of their vested rights in the supporting pillars of coal, especially if the proceeds of the tax in whole or in part may come back to the community for the relief of the sufferers upon the surface. The question whether or not the proposed form of tax is legitimate is a question which hinges upon the contention that I have last indicated as being the contention of the coal companies. The section now proposed would make it lawful for the legislature in its discretion to lay a tax, an excise tax, upon the business of coal mining, to discriminate between anthracite and bituminous, on the theory that the situations are not comparable in the two cases; that there is an evil to be dealt with in the one case that does not as yet exist in the other and would enable the taxing authority to make provisions for the application of the proceeds of the tax to the relief of the surface damaged. That is the question, and after considering it as carefully as I can, I come to the conclusion that it is a legitimate form of tax; that if it is true that the courts cannot wield the police power of the state and by injunction preserve the surface from destruction, that the greatness of the menace to public safety and the welfare of the entire community requires that somehow or other the industry that is responsible for this condition should be made to bear an equitable proportion of the cost of repair of injury or provide against it. So that it seems to me proper that this power should be given to the legislature, and that we may properly trust the legislature to measure the tax in such fashion that it will be fair and equitable to all concerned, both to the community occupying the surface and to the coal company which works below it; but, as I said, I am anxious for a personal reason that it should be made clear to the Commission that there were these two sides to the question before action is taken upon it.

Mr. FOX. Mr. Chairman: I have not studied this question at all. In fact, it is a new question to me. I am not as familiar with it, therefore, as Judge Kelly and Mr. Pepper, but I have listened with great interest to the statements made by Mr. Pepper as to the reason for the introduction of this resolution, and just at first blush it would seem that this was not a proper exercise of the police power. As I understand Mr. Pepper, I think the school district which he represents that purchased a property, in the line of that title there was clear notice to them that the support of the soil had been released by some prior owner; therefore, they were pre-

sumed to take that property subject to that release. Now, they have attempted in the courts in some ingenious way, such as only Mr. Pepper could suggest, certain things to contravene the lease and they failed in the attempt. They now propose to compensate this owner because he, having purchased this property with notice that it had no surface support, is nevertheless entitled to compensation for the value of surface support. Now, I am not stating the argument accurately, but that is the impression I gained from Mr. Pepper's statement, and if that is so, while it may be true that the legislature can properly exercise the police power in the interest of the general public to prevent the sinking of the surface, it does not seem to me that it is proper to put into the pocket of the owner of the soil compensation for an injury which resulted to his property which he took with notice.

Mr. PEPPER. Mr. Chairman: It must not be forgotten that while undoubtedly the analysis just made by Judge Fox is sound, the situation is actually somewhat different than the situation which would be indicated by that analysis. These releases, which undoubtedly have their full legal effect as between the parties, occurred early in the history of these communities, at a time when the release of the surface support seemed to be a thing which had no element of public significance. The situation that now develops is that you have a great and populous community living over a menace such as that represented by the sudden sinking of the surface with the consequent destruction of superimposed structures and loss of life. Now I take it, Mr. Chairman, that the legislature in the exercise of its police power might pass a statute forbidding the removal of these barrier pillars. I take it that it would be a legitimate exercise of the police power to prevent the occurrence of these happenings altogether, and that without compensation to the owner. It would be by the terms of the proposition an exercise of the police power as such. It would be a declaration by the legislature that in the interest of public safety, no matter what the chain of title might be, subsurface support was not to be removed under such and such conditions which would not include compensation. Now that was suggested as a possible way of dealing with the situation. Personally I balk at that suggestion because it seems to me that while the Supreme Court of the United States would hold that that was a valid exercise of the police power, yet the effect of it is substantially the confiscation of the coal. It therefore seems to me that instead of resorting to the exercise of the police power, the proper way to deal with the great public situation is through the tax power; that a tax might be graded in such a way upon the business of mining the coal that a large proportion of the value of the supporting coal in place would remain available for the profitable use of the coal company, but that a percentage of the value of the coal would be paid in the form of a tax by the coal company and a fund produced which would be in relief of communities and individuals suffering from the surface conditions. Now that is the theory of this proposal. It is not a proposal to use the police power. The police power I believe exists in such a case and could be exercised, although it would be like blowing up houses to stop a conflagration. It would amount to the confiscation of the property in public interest. It is not an attempt to invoke that great power. It is an attempt to deal with the situation through the medium of

taxation, a thing which has commended itself to the legislature as being fair, but the court felt impelled to hold that the act transcended the established limits of classification. This would extend the right of classification to cover this case.

Mr. KELLY. Mr. Chairman: Just a word supplemental to what Mr. Pepper has said. These releases which Judge Fox has referred to, and I may say that the situation is just as he recited it, in most cases are very, very old, perhaps thirty, forty or fifty years old, and I think it is only fair to say perhaps to the Commission that when they were inserted in the deeds conveying the surface lands the thought was very different from what it is now, and the policy of the mining of coal was very much different. The policy pursued in those days was to mine out two-thirds of the coal and substantially leave one-third for surface support which, under ordinary circumstances, was sufficient and which would support the surface. Under an unusual circumstance it might not prove in all cases sufficient to support the surface, but it was not the intention, and it was not the thought either of the managers of the mining operations or of the general public in those days that the time would ever come that the owners of the coal would return to mine out that which had been left in the pillars. The cost of mining would not warrant such a process and the price of coal in the early days would not warrant it as a commercial proposition, but as anthracite has grown scarcer in our community, particularly as coal is becoming exhausted in what they call first mining, and as the price of coal in the market has advanced, the policy has been changed so that under the conditions of the deeds the owners of the coal are pursuing their legal rights to go back and take it out. Now the way these things go, usually speaking, I might illustrate in this way: A man owned a farm, we will say, of one hundred acres of land. He owned, of course, from the center of the earth to the heavens, coal, minerals and all. He made a deed or lease of all the coal to an individual or a company and in that lease or deed he provided expressly that the lessee or grantee might take out all of the coal without being liable in any event whatsoever for any damage which might happen to the surface. Now what they both had in mind in those days was that if in the regular course of mining a pot-hole should happen, a subsidence should happen, that the mining company should not be held responsible because these things had happened more or less even when they left the usual quantity of coal in the ground for surface support. Perhaps years afterwards some enterprising real estate man would come along and would buy the surface of that one-hundred-acre farm and would cut it up into building lots, streets, lanes and alleys, and so forth, and perhaps on account of the lessee or the purchaser of the coal having gone into the coal business and erected a breaker or built a shaft or a slope, or whatever it might be, a colliery, there would be a demand for building lots and houses would be built upon them, and that surface which was of no particular value except perhaps as farm land in the first instance, and sometimes not even for that, became more or less valuable, became very much more valuable than it had been. And this real estate man sells the lots to A, B, C, D, E and F, and there being no pillar mining in vogue at the time, the purchasers would be thoughtless. They would never dream of the time ever coming when the pillars, the entire coal left in pillars, would be taken

out from under them and that their properties and homes might be precipitated in the mine hole. So that while the legal situation is exactly as Mr. Justice Fox stated it to be, yet the situation arose somewhat insidiously. It was like a fine-print provision in an insurance policy that the average person does not read, and the thought of ever in a wholesale way taking pillars out of mines never occurred to the purchasers of those lands in the early days. Anyone in our community who would buy a lot with such a provision in it within the last ten or fifteen years might well be said to have done it with his eyes open and be entitled to no consideration, but as a matter of fairness to the owners of those lots in the communities which have grown up under such circumstances, I think the Commission ought to be aware of the fact that while theoretically they took title with their eyes open, practically they did not. The situation as it has been developed never occurred to any of the purchasers of the surface lots at the time they made their purchases.

Mr. CARSON. Has any town collapsed or fallen in?

Mr. KELLY. In part; yes, sir.

Mr. FISHER. Mr. Chairman: From the discussion it would appear that this proposal is the result of a local situation affecting a particular industry in the state. I recall that for a good many years there have been delegations coming to the legislature from the anthracite regions trying to devise some way of relieving the distress to which Judge Kelly has referred. No method has ever been devised, no proposal has ever come here upon which the legislature could unite, and it is still a very vital question in the anthracite region. Now the difficulty, as I see it, with this amendment is that it is not limited to the anthracite coal nor does it limit the operation of this provision to that particular region. What is the provision? Well, first it provides for an excise tax. I have not studied this subject, it has come to me, as to most of you, very unexpectedly, but my conception of an excise tax is that it is any kind of a tax not levied upon a given or specific kind of property. Now, that is very broad, and opens up the possibility of all sorts of special taxation. That is the first objection that strikes me. Now, to what subjects of taxation will this provision open the way? Well, it says upon all mineral products,—upon mineral products! What are mineral products? That would apply to oil, gas, bituminous coal, ganister rock, shale, fireclay, slate, limestone and any product of the earth which might be converted into a commercial article. Now, that is a very wide range of objects so far as taxation is concerned. It would affect the entire state. It would particularly affect the region from which Judge Fox comes in its possible application to the cement industry. It would affect the central part of the state because of its large industries in the manufacturing of brick from ganister and the product from the lime quarries. It would affect my region because we are given to the mining of bituminous coal. It would effect what we know as the oil country, or the oil region, because the principal product and source of wealth is oil and gas. So that it has a very close application to every section of the state. I should not want to support this proposition in its present form without giving it very much more consideration than is possible under the circumstances.

Mr. REED. Mr. Chairman: There is an expression used by some judge that "hard cases make bad law," and that seems to be par-

ticularly applicable to this case to meet a condition of hardship to the inhabitants of a town in the anthracite region where we are, as Senator Fisher said, embarking on an entirely new system of taxation. One of the very things that I thought we had put to sleep before recess has come up again in another guise, and really a more insidious one. There is no particular reason why under this particular provision you cannot levy an excise tax on the anthracite region and another on an entirely different basis of calculation upon the bituminous region, another one on the oil fields, another on the limestone, another on the iron ore that is still left in this state, and so on. Then what do you do with the money? It is said here that the coal company, the anthracite coal companies, that are the existing cause of this provision have a perfectly legal right to their property; they have a legal right to take out all the coal. The man that sold them the coal reserved no surface rights, and did it with his eyes open. I have no doubt that he thought he was getting a good round price for his property. Because somebody has settled on that property with full knowledge, or should have had full knowledge of the right to the minerals, it is proposed to take from the coal company its own property, its right to its earnings lawfully resulting from the exercise of its business and its own property, and give them to whoever happens in the judgment of the legislature or the local tax authorities to be injured. I really think this is a very dangerous proposition. I was not supposed to say anything because I would let the anthracite people take care of themselves, but after hearing Senator Fisher, knowing that it would affect the mining industries of our end of the state, I think my friend, who is the author of this proposition, ought to use his ingenuity a little bit more and not affect regions which I know he has no idea of affecting. There is no limit to an excise tax. In the judgment of the legislature it is not based upon assessed value, but under this provision it may be anything that happens to appeal to the legislature at the time.

Mr. GORDON. Mr. Chairman: The objection which I see to this proposition is that it provides for the application of tax money in payment to individuals for injuries sustained. I think there is a provision in the Constitution which forbids any such use to be made whatever of the public money which is provided by general taxation. This provision would allow taxes to be levied in order to reimburse individuals for injuries suffered, which I think is against the spirit of all taxation.

On the question recurring,

Will the Committee agree to the section?

It was not agreed to.

ARTICLE IX, NEW SECTION.

The CHAIRMAN. The next section in order for consideration is a new section to article IX of the Constitution, proposed by Mr. Kelly.

The Secretary read the section as follows:

Section —. The legislature shall provide that taxpayers may pay all taxes at one office in each municipality.

On the question,

Will the Committee adopt the section?

TAX OFFICE.

Mr. FISHER. Mr. Chairman: Would the effect of that be to compel each municipality to establish a fixed office for the collection of taxes?

Mr. KELLY. Mr. Chairman: That is the thought that I had in mind. The taxpayer should have the right to go to one place within the city, borough or township in which he or she lives to pay the taxes and that the taxpayer would not have to go to three, four or sometimes a dozen different collectors to pay the tax. That is the very thought we had in mind.

Mr. FISHER. Mr. Chairman: I am in sympathy with the proposal. It would be a very great convenience to the taxpayers if it could be done, but I am afraid under the conditions as they exist in rural districts that it would be impracticable. I hardly see how in some of the small and sparsely populated districts that it would be possible to have a fixed point without the erection of a municipal building or something of that sort. Now the collector is elected and the taxpayers know who the collector is, and so the taxpayers pay him.

Mr. KELLY. Mr. Chairman: If the gentleman will excuse an interruption, there is no difficulty about that. This provision that I have submitted here would simply require that the tax collector, at his residence or his office, would receive all of the taxes, not that there should be one man to receive poor tax, another county tax, another school tax, and so on. In other words, there should be a place, at least one place if not one person, it ought to be one person, it is in the boroughs, who collects his tax at his home. It might be in one part of the borough this year, and it might be in another part two years from now, and another place four years from now when another tax collector is appointed. Very naturally in a city like Harrisburg a taxpayer may have to go to as many tax collectors as there are wards if he should happen to own property in each of the wards of the city of Harrisburg. My thought is that this is rather an imposition upon the taxpayer and that there ought to be relief, and that the legislature can work out the relief. The details are entirely, of course, for the legislature.

Mr. FISHER. Yes, but that is just exactly where the difficulty arises in the rural districts. The collector of school taxes has his own office, the collector of road taxes has another office. The collection of taxes is not centered in any one person so that it will be impossible as long as we have our divided system of taxation to apply the principle of payment at an established given place. If the unification was made in the office of tax collector, then I think the situation could be met.

Mr. KELLY. Mr. Chairman: I would be glad to suggest a change in my amendment by striking out the word "municipality" and inserting in lieu thereof the words "cities and boroughs of the commonwealth," so that the section will read: "The legislature shall provide that taxpayers may pay all taxes at one office in each city and borough." It seems to me, inasmuch as they do that in each of the

boroughs now, it would be a very easy matter, and could not be a hardship to require that that should be done in the city.

Mr. FISHER. That is entirely feasible.

Mr. FOX. Mr. Chairman: May I ask whether it is necessary to incorporate this in the Constitution? If the legislature has power to do it in the borough, why may they not do it in a town?

Mr. KELLY. Mr. Chairman: In my opinion, in my judgment, it can, but here is the point; it has been asked and importuned, but this body has refused to do it so far. I say they "shall," the legislature shall, just as they have provided in some other places. I say they "shall" do certain things, and in certain instances they "may." I would make it obligatory.

On the question recurring,

Will the Committee adopt the section?

It was adopted.

NEW ARTICLE, SECTION 21.

The CHAIRMAN. The next section in order for consideration is section 21 of the proposed new article of the Constitution, the report of the special committee on local government being that section 7 of article IX of the present Constitution be dropped and be amended to become section 21 of this article.

The Secretary read the section as follows:

Section 21. The general assembly shall not authorize any municipality to become a stockholder in any company, association or corporation or to obtain or appropriate money for or to loan its credit to any corporation, association, institution or individual except that, by general law, the state may authorize municipalities to loan credit to public service companies for the construction, leasing, maintenance or operation of public service facilities.

On the question,

Will the Committee adopt the report?

MUNICIPALITIES NOT TO BECOME STOCKHOLDERS IN CORPORATIONS NOR LOAN CREDIT.

Mr. PEPPER. Mr. Chairman: I feel constrained to oppose that section. It seems to me it is equivalent to cutting the heart out of the prohibition in the form of introducing an exception. If I correctly understand it, the proposition reduces itself to this; the municipality shall not loan its credit to any corporation, and so forth, but may loan its credit to a public service corporation. It seems to me that if the restriction of the loan of municipal credit is a wise one, and I submit that it is, that the case in which the municipality would be most likely to desire to make a loan of credit is in the case of a public service corporation, and that by this exception this would be the case where the practice would be legalized. I should think that this might open the door to such alliances and partnerships between municipalities and public service corporations as might result in bankrupting a municipality. I think that there is something wrong with the proposal in its breadth and scope.

Mr. FISHER. Mr. Chairman: I move to amend the report of the committee by striking out the words in italics "the state may authorize municipalities to loan credit to public service companies for the

construction, leasing, maintenance or operation of public service facilities."

Mr. GORDON. Mr. Chairman: I second the motion.

The CHAIRMAN. So that the section would read in the bold type.

Mr. FISHER. Mr. Chairman: So that the section will read as in the present Constitution with the word "institution" stricken out.

On the question,

Will the Committee agree to the amendment?

It was agreed to.

On the question,

Will the Committee adopt the report as amended?

Mr. PEPPER. Mr. Chairman: May I before that motion is put ask you, sir, to consider a proposal to deal in another way with the very real problem which is presented by the section as proposed? The way I see of dealing with that problem is somewhat more liberal than the provision of the present Constitution, but far more conservative than the proposal which has been rejected. It may be remembered by members of the Commission that this case was suggested in debate at an earlier stage of our proceedings. The case was supposed of a public service facility owned by a municipality. The municipality desires to lease the facility to a public service corporation. The people of the municipality chiefly desire that the facility shall be used for public convenience, not for the purpose of bringing any pecuniary return to the municipality. Is it or is it not proper that the municipality should have the right to make a lease of that public service facility owned by it for a consideration which principally or exclusively will be the use of the facility by the lessee under regulations protective of the public interest? If it is desirable that the situation should be so dealt with, would such a lease amount to the loan of credit by the municipality to the corporation? If that were so it would be inhibited by this provision of the Constitution. That case having been put, our attention was called to the fact that the supreme court of Ohio had decided that a lease of that sort was one which a municipality might not properly make, because in substance, though not in form, it was a loan of municipal credit to the corporation. Now while I am unalterably opposed to anything which is in substance a loan of municipal credit to a corporation, it does not seem to me that the transaction which I have just been supposing involves any such loan. It seems to me that if a municipality has a public service facility, subway, water plant, gas plant, an elevated railroad structure, or as the case may be, a facility of which the municipality is the owner, the great end in view might be to get that thing operated under regulations protective of the public interests. I can well imagine a valid and safe lease so framed that the return to the municipality would be scarcely more than the assurance that the thing would be operated in the public interest, and subject to the regulation of the public service commission, or such agency as might be established by law. The return so far as it is pecuniary may very probably and properly be contingent on the earnings of the entire system of the lessee, and if so, if those earnings did not materialize, there would be on actual return to the municipality in the years when there would be no earnings. It seems to me that the contingency just suggested ought to be guarded against, and that we ought in the light of the decision of an important court in a sister state to realize

that such a decision might likewise be rendered here unless the Constitution provides to the contrary. I have accordingly ventured to suggest this as an amendment to the section of the Constitution as it stands, leaving out the word "institution," which seems to me not properly to belong there. It is a word that has no exact legal meaning. I would make the whole section read thus: "The general assembly shall not authorize any municipality to become a stockholder in any company, association or corporation or to obtain or appropriate money for or to loan its credit to any corporation, association, institution or individual." This is the same as the present Constitution, except omitting the word "institution." Then this is new: "But a lease by a municipality of a public service facility owned by it shall not be construed to violate the provisions of this section merely because the principal consideration for the lease is the covenant of the lessee to use the facility under regulations protective of public interest or because the provision for a pecuniary return to the lessor is made contingent upon the earnings of the lessee's entire system." I move that, sir, as an amendment to the present section of the Constitution.

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

The CHAIRMAN. The amendment offered by Mr. Pepper, as the Chair understands it, is offered as a substitute for the report of the committee.

Mr. CONNELLY. Mr. Chairman: I fail to see where the amendment meets the situation as pictured by Mr. Pepper. Today under the Constitution a city is prohibited from loaning its credit to a municipal corporation. The particular thought in mind to cover this subject-matter, however, grows out of some amendments to the Constitution under the act of 1913 giving the city of Philadelphia the right to enter into a lease or an operating agreement for the use of the public facility owned by the city with any individual or corporation. I take it that under that constitutional amendment wherein a large sum of money was borrowed, and under the act carrying out the thought in this Constitution, the city can make a contract with the public service company for the operation of high-speed lines in connection with the surface lines so long as there is no interference with the faith and credit of the municipality. Today they can do that. The particular objection, however, has arisen because in framing a contract there was a pledging in substance of the faith and credit of the municipality to private corporations, which was prohibited by the Constitution. Now these words add nothing to the rights as they exist today. They mean nothing more than the city can today make this contract with A B Company for the operation of its high-speed lines. I do not see how this meets the case, especially if there should be, as there probably will be, an effort in some way to cover up the question of the loaning of the faith or credit of the municipality to the working out of this enterprise. Taking Mr. Pepper's first remarks, today Philadelphia can make its own contracts in view of the act of 1913, and unless there is language to cover something different than what I think this is intended to cover, this will never help Philadelphia so far as working out her problem of subway transportation is concerned with any privately

owned corporation. Certainly you will always be met with this question, so long as we retain this clause, I mean the foregoing clause as to loaning faith and credit. The objection is here raised to the mere fact that they can now make a lease, which I say under the act of 1913 can be done, and was done, and would have been carried out, were it not for the pledge of faith and credit. This clause does not add anything to the situation, in my judgment, so far as Philadelphia is concerned in operating its high-speed lines, and it does not, in my judgment, as I view this situation, get away from the decision in the Ohio case, to which Mr. Pepper has referred, and I do not believe it will help Philadelphia.

Mr. REED. Mr. Chairman: I dislike very much to interfere in Philadelphia's domestic affairs, but we have a proposition coming up in Pittsburgh where the city proposes to build a subway, and probably will, and then lease it to the Pittsburgh Railways, because it would be operated in connection with the railways. Now I do not want to see anything that will in any way impair the credit of Pittsburgh or of Philadelphia, or impair the operation of the Pittsburgh Railways, or any other system of transit. And if it be as Mr. Connelly says that a perfectly legal contract can be made to-day if the city of Pittsburgh builds that subway which the railways can operate, then I do not see the necessity of opening the door to a pledging of its credit. It seems to me that there is room for an evasion. You cannot lend your credit directly, the city cannot lend its credit directly to a local public service company, but it can buy property and then lease it under this provision as proposed. I think we ought to go a little slow with it.

Mr. GORDON. Mr. Chairman: I think Mr. Connelly's view of the matter is not sound, and probably is without due reflection upon his part, that is, as a legal proposition. By virtue of the Ohio decision it was held that leasing a public facility with an agreement that the rental should be dependent upon the receipts from the facilities was the loaning of the credit of the municipality?

Mr. PEPPER. Yes, sir.

Mr. GORDON. If the lease had been for a definite rental quite irrespective of the returns for the use of the public facility, it would have been a good lease under that decision. All that the act of 1913 does is to permit the city to make a lease in which the rental reserved shall be payable irrespective of the revenue derived from the utility. Now to overcome that limitation thus raised by the Ohio decision, which decision I do not think was very well considered, this amendment to the provision denying the right to loan the credit of the municipality is offered so that if the city of Philadelphia or the city of Pittsburgh, having an underground tube, or having an overhead railroad, desired to lease it to any company, it might make a lease in which the rental should be derived from the revenues of the use, and from those revenues alone. It is simply an endeavor to bridge over the Ohio decision. That is not a loaning of credit. I do not think in this state the Ohio decision would have been followed. The prohibition is against the municipality loaning its credit to a corporation. Now, what does credit mean? Popularly, technically, what does it mean in such a matter as that? Why, it means this; financial responsibility. It does not mean to help; it means a responsibility to meet an obligation. If I loan my credit to

another, we will say by endorsing his note, that is loaning my credit, if such an impossible thing should exist as a corporation discounting a note because it had my signature on it. I would be lending my ultimate responsibility for the debt, and that is what lending of credit means in this Constitution, and that alone. Now, by such a lease as that contained in the provision suggested by Dr. Pepper there is no credit of the city loaned at all. It can never become responsible for a dollar of any person's debt, or any corporation's debt. It assumes no responsibility, no liability of any kind whatever, but it will have made a lease in which it will get a return in accordance with the value of the thing leased to the corporation that leases it; an entirely equitable arrangement. Practically the thing for the city of Philadelphia and the city of Pittsburgh to do, I presume is this: If a tube should be built, an underground tube, which was not presently of value to a corporation so that it could be conducted at a profit, and the city could not conduct it except at a loss, and it was not desirable that the city should lose its money in the exercise of such a franchise itself, it should be permitted to lease that underground tube to a corporation with a provision as to the rental that it should be dependent upon the business transacted with the thing leased. Now, that is what is intended to be overcome, and unless that is done, if the decision of Ohio should prevail, and if the underground railroad in the city of Philadelphia under Broad street should be built, unless that is done, I think that the underground road will remain on the hands of the city unused unless it can make a lease such as this, which would not be improvident, and which would not lend the credit of the municipality. I therefore hope that Mr. Connelly upon reflection will see that this is to the interest of the city, that it is not a duplication of legislation, and that it is imperative if the city is going to have any advantage from its transit facilities which it is itself building with the taxpayers' money, and which should not remain idle underneath the highway.

Mr. CONNELLY. Mr. Chairman: That is just exactly my thought. In the latter part of Judge Gordon's argument, if his thought is to prevail, the line of the amendment demands that for some space of time, whether it would be a year, two, three or four years, Philadelphia will not be in a position even to begin the building of its high-speed lines. Just by contrast I would rather have, if Judge Gordon would in his leisure moments consider the thought that I have expressed before, namely, that the city of Philadelphia, owning these high-speed lines, it being their property, that they have the right to make such a lease or such a contract as is specifically set forth in the act of 1913, whether it be based upon a rental value or otherwise, so long as there is not a lending of the faith and credit. I think Judge Gordon has misinterpreted my line of reasoning, because I contend that under the law today, under the act of 1913, they can make such a lease based upon a rental that will obviate these difficulties; but I do not see where this by reason of the delay is ever going to help Philadelphia. Because suppose our work should not be approved and a space of time should intervene, what happens to that great undertaking to which the city is committed in many millions of dollars? What is going to happen in the future so far as the enormous cost and expenditure and waste of time incident to it are concerned? In other words, my mind has reached this point, that

I believe under the Constitution and under the law today, Philadelphia can make a contract so long as there is no pledging of the faith and credit. I do not believe, and I agree with Judge Gordon, that the Ohio case would ever be followed in Pennsylvania to that extent, because the line of difference is a very great one, and would not control. It seems to me to be the sentiment of this Commission that there should not be a lending of the faith and credit of the municipality for the benefit of the private corporations. Just one thought, Mr. Chairman; my thought is today that under the law Philadelphia can do what I am trying to point out. I do not believe, much as I appreciate the thought expressed by Judge Gordon, that the language in this amendment or this proposal by Mr. Pepper is going to help or accelerate or in anywise move forward the contemplated public improvement in Philadelphia.

Mr. GORDON. Mr. Chairman: May I ask Mr. Connelly what harm it will do, if he is right in the construction of the existing law?

Mr. CONNELLY. Mr. Chairman: That is my opinion.

Mr. GORDON. Mr. Chairman: Permit me to suggest that even a former city solicitor might be wrong in that matter.

Mr. CONNELLY. Mr. Chairman: As much as a former judge.

Mr. GORDON. If you are in favor of the thing itself, why should not this provision be put in here, and then we can both be wrong, and yet the public will be served.

Mr. CONNELLY. Mr. Chairman: Only this; that I am not going to vote today for a proposal that means delay, that means that undertakings that should be undertaken today are going to be postponed until such time as the Constitution is going to be revised or amended to meet the situation in Philadelphia, and I do not want to fool myself with the thought, much as a former city solicitor may be in error as well as a court might be in error, that is going to help Philadelphia because of the language involved.

The CHAIRMAN. So if the Chair understands it, the situation lies in the twilight zone between Judge Gordon and Mr. Connelly. I want to vote intelligently on this question. Is it Mr. Connelly's thought that the adoption of this amendment might throw doubt on the city's powers as they are, and that by the adoption of this amendment it may not be put in force for at least two years, that that might mean tying up of the whole situation in Philadelphia? Is that Mr. Connelly's thought?

Mr. CONNELLY. Mr. Chairman: That is in substance my line of reasoning.

The CHAIRMAN. There has been brought to my attention another matter which I think might be very greatly clarified, but I was asked by a gentleman not to make the suggestion, because he thought they could go through on the Constitution as it is, and to attempt to amend it would throw such a doubt on the constitutional provision as it is that the whole project might be defeated. The people would then be called upon to assume the responsibility.

Mr. GORDON. Mr. Chairman: The doubt has been cast upon the situation by the Ohio decision. A responsible court has said that such a lease would be a lending of credit.

Mr. FISHER. Mr. Chairman: I was hopeful that the gentlemen from Philadelphia, where the occasion has arisen that has prompted this amendment, might be able to agree and enlighten the rest of us

as to just exactly what was meant and what was intended by Mr. Pepper's amendment. It seems to have occasioned disagreement between those who are attempting to interpret it. It looks to me as though this was an effort to construe the provisions of the prohibition which exists in the first part of the section, which is identical with the present Constitution. If I comprehend the question, doubt has arisen with respect to the leasing of certain public utilities in the city of Philadelphia, as to whether or not the consideration in those leases constitutes the lending of the credit of the city to the privately operated public service company. Now, this amendment simply seeks to clear that doubt and to interpret the provisions of the existing constitution by saying that this question shall be taken out of the twilight zone and put definitely into expression whereby its meaning is clear and definite. If that be so, I can see no objection whatever to adding this amendment. It is general in its provisions, and, of course, would be applicable to a like situation in any other municipality in the state.

MR. PEPPER. Mr. Chairman: I think it is unfortunate although perhaps natural that we should discuss questions like this as if they were essentially local questions. This question of the relationship between municipalities and public service corporations is going to loom even larger in the future than it has in the past. It seems to me very important that permissible transactions between them should be defined with some measure of certainty. It is for the benefit of the people; it is for the benefit of the investors; it makes more effective public service. Senator Fisher has pointed out that the actual situation developed in Philadelphia with respect to transit has a very much wider reach than that. If it is a good thing generally, we ought to do it; if it is a bad thing generally, we ought not to do it because of Philadelphia's need. I am considering it as a general proposition. Now, as a general proposition, is not this a suggestion which possibly Mr. Connelly would be willing to take into consideration that whereas it is true generally that a legislative or a constitutional declaration on a subject which you believe to be already clear tends to strengthen the argument that the law as it stands is different from the law as declared in the proposal in question, or else that it would never have been necessary to adopt the law or enact the constitutional provisions—while that is true generally, is this not also true, as Senator Fisher has intimated, that no such inference as that really arises where the statement in question is to the effect that an existing constitutional declaration does *not* apply to the case which we have under consideration? How could a court, even if we flatter ourselves by assuming that the court would be influenced by the view of this Commission as to what the existing Constitution means, even if we flatter ourselves to that extent, how could a court in construing this section reach the conclusion that a lease of the kind contemplated was a violation of the section merely because we had taken pains to declare it was not? It seems to me that is attributing a mental process to the court which is not very likely to occur. Now, with reference to the necessity of making this provision, is it not the part of wisdom in a matter of far-reaching importance like this to take account of the possibility that the supreme court of Pennsylvania might reach the same conclusions as the supreme court of Ohio?

Suppose, Mr. Chairman, that in some important municipality of this state a question should arise whether a lease of a certain type could or could not be made, and financial arrangements negotiated based upon the lease as drawn, and suppose the possibility of making that lease was submitted to counsel, and that there was the absence of any authority on the subject in Pennsylvania, but there was a supreme court decision in Ohio that such a lease could not be upheld. I think there would be no alternative on the part of counsel except to advise that nothing could be done finally until the question had been precipitated through litigation and had been fought through to the supreme court of Pennsylvania, and a decision rendered in favor of what was proposed and against the result reached in Ohio. It is time-consuming, it is expensive, and it is quite unnecessary. I think Mr. Connelly and all of us are agreed that if the language which we now propose to inject into the Constitution had been present in the Constitution of Ohio when the Ohio case came up, the decision would have been the other way. All that we are proposing is that we shall so phrase a constitutional provision in Pennsylvania as to produce a state of affairs which would have rendered the Ohio decision impossible. We are not proposing really to trench upon the prohibition which the wisdom of decades has vindicated—the prohibition upon the lending or pledging municipal credit. We are merely trying to err, if you please, on the side of safety, by declaring that a very important class of public service arrangements between municipalities and public service corporations does not involve a lending or a pledging of municipal credit, the supreme court of Ohio to the contrary notwithstanding.

Mr. ENGLISH. Mr. Chairman: As I indicated last week, I am very much in sympathy with devising a remedy to meet the evils that exist in the transportation problems in cities today. As Mr. Pepper has said, there is an evil that is fast developing, and which presents a problem that is not easy to solve, but I do not believe that this section as proposed is by any means broad enough to afford all of the remedies that may be needed. Bear in mind, if you please, that in this Constitution we are limiting the borrowing power of municipalities. Street railway transportation is absolutely essential in my judgment to the development of any community, but I think it is quite true that there are a great many cities in Pennsylvania which do not have the means, and cannot get them within their constitutional limitations, for the purpose of constructing such facilities as Philadelphia seems to have provided for itself. Now, in this class of cases the remedy will not be found in the construction by the city and the leasing by the city of the facility or whatever extension of the transportation system may be necessary for the public welfare, the city simply will not have the borrowing power and cannot get the money for the purposes. Now that problem is not peculiar to Pennsylvania cities by any means. It has been met, as I said last week, in other places, and successfully overcome by a much simpler device than this. Whether or not the making of a lease between a municipality and a public utility is a pledging of credit, it seems to me is beside the point for the moment. The municipality should be placed in the position not only to build and to operate its own facilities, if it wants to handle its transportation problems in that

way, but also to adopt the Cleveland plan; as it is popularly called, and to guarantee to the existing facility a fixed return on its investment, in exchange for the control and the operation and the extension of the facilities of the company if it wishes. Now, this amendment will not meet that situation. This amendment will not provide that sort of remedy, but that sort of remedy in my judgment will be found necessary in all of those municipalities throughout the state, which, on account of the narrow margin between their existing indebtedness and their borrowing power, will find it impossible to secure the money either to construct their own transportation facilities for their own operation or to construct facilities for the purpose of leasing them to an existing company. I submit, therefore, that this remedy may meet this temporary situation in Philadelphia, but does not provide the remedies that may be found necessary throughout the commonwealth for the solution of this difficulty and that while the report of the committee rather boldly proposed the problem which I thought was right, so that it might be clearly understood, it seems to me that in the days to come it will be the duty of this Commission to work out a revision of this section that will make it possible for the municipalities of Pennsylvania to secure themselves transportation facilities without exhausting the constitutional limitations of their indebtedness. Now, the section says that "a lease by a municipality of a public service facility owned by it shall not be construed to violate the provisions of this section merely because the principal consideration of the lease is a certain covenant" already referred to. Suppose the supreme court should undertake to say that that is a violation of the section on the lending of credit, not merely because of the existence of one or two specific covenants in the agreement, but because of the principle involved that the mere existence of any subpartnership relation between a municipality and the facility is *per se* a lending of credit; that, no matter what subterfuge may be resorted to, it would be a violation of the existing section of the Constitution and it would be a lending of municipal credit if you build a facility and lease it without regard to the specific covenant that may be contained in the instrument. I submit, therefore, that this section does not meet the situation in its entirety. It must be infinitely broader than this. And as I see it, it might not meet even the particular situation in Philadelphia. I do not see how it can be very useful to anybody.

Mr. CARSON. Mr. Chairman: I do not wish to appear hypercritical as to the use of words. I frankly state, as Justice Fox did, that the subject is entirely new to me. I have given it no consideration, but in the present shape it seems to me to be a very singular form of a constitutional provision. In the first part of it, it is clearly a negation of power, and in the second part of it there is an attempt to limit that negation. Then there is an attempt to interpret the reason for that negation in order to meet the specific decision in a sister state, which shows some difficulty in the way. Now, it does not approve itself to my judgment as a proper form of a solemn constitutional provision. I do not know how far the gentleman desires to yoke up in the same section a positive prohibition and at the same time to suspend possible judicial action by interpreting a certain act as a flat violation of that prohibition. It is with a great

deal of diffidence that I turn towards Mr. Pepper and ask whether this language will in the slightest degree contribute to the clearing up of the thought. It strikes me that this is too argumentative and is slightly verbose. Would this be your thought? "The general assembly shall not authorize any municipality to become a stockholder in any company, association or corporation or to obtain or appropriate money for or lend its credit to any corporation or association, institution or individual, but may lease a public service facility owned by it where the covenants of the lessee are subject to regulations protective of public interests, and where the pecuniary return is contingent upon the earnings of the lessee's entire system."

Mr. PEPPER. Mr. Chairman: I am not quite clear that I understand the situation. You are looking to me as if some question was addressed to me. I followed the suggestion, Mr. Chairman, as Mr. Carson made it, and was not able to count the words, but I think there are exactly the same number in his proposal as in the one under consideration.

Mr. CARSON. Your mental arithmethic is at fault. As you will see, I have reduced your words about fifty per cent.

Mr. PEPPER. I think possibly by so doing you have introduced fifty per cent of obscurity into what was one hundred per cent clear.

Mr. CARSON. Then you have satisfied me that you are still wedded to your idol.

Mr. GORDON. Mr. Chairman: Will the gentleman please read his amendment again?

Mr. CARSON. Mr. Chairman: I have stricken out twenty-five of Mr. Pepper's words, and I have inserted—

Mr. PEPPER. Mr. Chairman: I apologize.

Mr. CARSON. Mr. Chairman: And I have inserted seven of my own. Judge Gordon desires to hear it read again, and I do not assert that my words make the obscurity any less obscure, but it expresses it in more concise terms. "It may lease a public facility."

Mr. GORDON. Mr. Chairman: Pardon me, but that is wrong.

Mr. CARSON. Mr. Chairman: "The general assembly shall not authorize any municipality to become a stockholder in any company, association or corporation or to obtain or appropriate money for or to loan its credit to any corporation, association, institution or individual, but may lease a public service facility owned by it where the covenants of the lessee are subject to regulations protective of the public interests, and where the pecuniary return is contingent upon the earnings of the lessee's entire system."

Mr. PEPPER. Mr. Chairman: I think that is better than my own, and I withdraw my mathematical observation, and beg that the retraction be entered upon the records of the Commission.

Mr. CARSON. Mr. Chairman: The gentleman was simply blinded by the sudden excess of light, that is all.

Mr. PEPPER. Mr. Chairman: Yes, it is a case which is comparable only to the conversion of Saint Paul. Under the circumstances it would be a misnomer to call it the Pepper amendment because it is the Carson amendment.

Mr. FISHER. Mr. Chairman: I should like to ask Mr. Carson whether his amendment would have the effect of limiting the power to lease unless coupled with the conditions which he has stipulated.

Mr. CARSON. Mr. Chairman: I think it would.

Mr. FISHER. Mr. Chairman: It would only limit the powers.

Mr. CARSON. Mr. Chairman: I do not want to limit the powers at all. I think it is a dangerous thing to put a negation of power and a grant of power in the same section. Two contrary things, both at the same time, do not go together. I was asking simply for information. I merely wanted to see whether I got Mr. Pepper's thought.

Mr. FISHER. Mr. Chairman: The distinction between the two proposals as I gather it is that Mr. Pepper's proposition was simply an interpretation to the effect that the negation did not apply to a lease which contained two particular covenants or conditions set forth; but Mr. Carson's proposition will affect the power of the municipality to make a lease at all, and limit its power except in the cases mentioned.

Mr. CARSON. Mr. Chairman: No, I did not want to do that at all. The gentlemen who represent cities and boroughs and have equipped themselves by long experience in office are better judges of that. I do not want to do the slightest thing to embarrass them.

The CHAIRMAN. It does not seem to the Chair that it would embarrass the situation at all. I do not quite follow that thought. It is a grant of power to do the thing as specified under the conditions that are named, and, of course, those conditions are intended to be protective of the municipality.

Mr. FISHER. Yes, but that would limit the power of the municipality to make any lease save in the instances covered by this amendment. Now, it has general power to make a lease of its facilities. There is no limitation or restriction on it at all. The question arises here because of certain provisions in leases which limit the earning power of the facility because of certain limitations or restrictions in order to safeguard the public and further because its rental is limited by the earning power of the facility.

Mr. PEPPER. Mr. Chairman: It is an affirmative statement pregnant with a negative.

Mr. FISHER. Mr. Chairman: That is right.

Mr. ENGLISH. Mr. Chairman: As I understand this section, the latter part of it is intended to be a construction of the lending of credit clause in the Constitution. Now, then, the construction which is contained in the section is this: That the existence of a lease between a municipality and a facility is not to be construed in violation of the section because certain covenants appear in the lease. It seems to me there is nothing in this construction which even passes upon the question as to whether the lease itself is a lending of credit by the municipality to the facility.

Mr. PEPPER. Mr. Chairman: Might I ask that Mr. Carson's amendment be read again? I think from what Mr. English just said that he did not catch the full import of Mr. Carson's amendment.

Mr. CARSON. Mr. Chairman: I did not amend, I did not get as far as an amendment, I asked Mr. Pepper—

The CHAIRMAN. We are trying to clarify the thought.

Mr. CARSON. Mr. Chairman: The first five lines are exactly as you have them before you, that a municipality may lease a public

facility owned by it, where the covenants of the lessee are subject to regulation protective of the public interests, and the pecuniary rentals to the lessor are contingent upon the earnings of the lessee's entire system.

The CHAIRMAN. That ultimately may be found to be a lending of credit, as the Chair understands it.

Mr. ENGLISH. Mr. Chairman: May I ask the gentleman a question? Suppose the lease does not contain a covenant which is contingent upon the earnings of the company, would that not leave wide open the question as to whether the leasing itself was a lending of credit? That is what I am trying to get at.

Mr. CARSON. Mr. Chairman: I think it shows the danger by constitutional amendment to guard against a possible judicial decision. That is what I think is the real value of the discussion.

Mr. CONNELLY. Mr. Chairman: Well, I am going to vote against the amendment of Mr. Pepper. I think the proposal of Mr. Carson is even worse, because I think it so narrows it down that even assuming that I am absolutely wrong in my thought, I think if Mr. Carson's proposal is adopted, it makes it doubly sure.

Mr. CARSON. Mr. Chairman: Well then, we will take it ont because we do not want to hurt you.

Mr. ENGLISH. Mr. Chairman: May I suggest this in regard to another side of the question which is undoubtedly an important one in its ramifications? No matter how this language is juggled for the purpose of meeting a particular set of facts in Philadelphia, it does not provide the remedies the general situation demands, and it seems to me for the present we may let the language of the old section stand until such time as we have had opportunity to prepare a section that will meet not only the difficulty in Philadelphia but give us the remedy we need throughout the entire state.

The CHAIRMAN. The suggestion appeals to the Chair.

Mr. GORDON. Mr. Chairman: I am sure Mr. English desires to have the larger remedy, but that I will say ought not to induce him to vote against the smaller. Edmund Burke used to say, and he was highly extoled by Mr. Buckley in his History of Civilization, that a statesman ought to take his half loaf if he could not get the whole, and that in all constructive statesmanship one should even take a slice of bread if he could not get the whole. Now, Mr. English would allow the municipalities to give their credit to corporations, and the Commission decided against that; but it is now proposed that this Commission shall declare that a certain form of lease is not in contravention of the provisions of the fundamental law. He ought to vote for that, he is for the larger proposition, and he ought to be for the smaller one contained in the larger one, and afterwards make his contest for an enlargement of the other. I do not see any force in the criticism of Mr. Carson's proviso placed on Mr. Pepper's elongated one. I think they both meet the situation reasonably well. The only point that has been raised that I think ought to be fixed and answered is, this proposition allows a certain form of lease; therefore, it may be taken to deny all other forms of lease upon the principle of law that where one thing is expressed, all others are excluded. That is only true so far as the legislature is concerned. A proviso to a piece of legislation must be considered in connection with the enacting clause to which it is a proviso. Now,

the enacting clause provides that credit shall not be loaned by a municipality, and the exception is made to that, we will call it an exception, a proviso is made for the lending of credit; that is all that affects that proposition. It says that a certain form of lease shall not militate against that provision of the Constitution, but that proviso cannot be construed to be a denial of all other forms of lease which have no relation to the subject-matter whatever. Therefore, I think the proposition that where one thing is expressed, all others are excluded, does not apply to this proviso. It never applies to a proviso except as to the subject-matter to which it is a proviso.

Mr. REED. Mr. Chairman: I think if you strike out the words "merely because," and put in the word "although," you may make the sense a little better; "but a lease by a municipality of a public service facility owned by it shall not be construed to violate the provisions of this section although the principal consideration for the lease is the covenant of the lessee to use and operate under reasonable regulations." It seems to me that is plainer than "merely because."

The CHAIRMAN. That amends Mr. Pepper's language. Is the amendment accepted?

Mr. PEPPER. Mr. Chairman: I accept that. I think the substance of that language will be as far as it goes satisfactory to Mr. Connelly and Mr. English, because it is in the direction of greater breadth than the language in which I had originally framed it.

On the question,

Will the Committee adopt the substitute as amended?

It was adopted.

NEW ARTICLE, SECTION 22.

The CHAIRMAN. The next section in order for consideration is section 22 of the proposed new article of the Constitution, the report of the special committee on local government being that the substitute for sections 8 and 15 of article IX of the present constitution shall become section 22 of this article.

The Secretary read the proposed section as follows:

Section 22. A municipality shall have the power to incur indebtedness to an amount not exceeding ten per centum upon the assessed value of the taxable property therein, but the general assembly may by law reduce or otherwise further limit such power.

A municipal ordinance incurring a new debt to an amount in excess of two per centum upon the assessed value of the taxable property within the municipality shall be submitted to the electors at a public election in such manner as shall be provided by law, and shall become valid when approved by a majority of the electors voting thereon. An ordinance of a county, township or borough having a debt in excess of seven per centum upon the taxable property therein incurring a new debt shall become valid when approved in like manner by three-fifths of the electors voting thereon.

In calculating the indebtedness of a municipality for the purpose of ascertaining its borrowing capacity, there shall be deducted from the indebtedness and disregarded in the calculation:

(a) The amount of any indebtedness incurred for public improvements secured by liens on the properties acquired and imposing no municipal obligation whatever.

(b) Any debt incurred to acquire public improvements, provided the net income derived from the property acquired for the period of five years immediately preceding its acquisition shall have been sufficient to have paid the interest and sinking fund charges for five years on such indebtedness.

(c) An amount equal to that capital sum which will yield at the current rate of interest and sinking fund charges an annual revenue equal to the net revenue received by the municipality from any public improvement during the last preceding fiscal year, provided the debt incurred for the acquisition of the property has not been deducted under the provisions of clause (b) hereof.

On the question,

Will the Committee adopt the report?

Mr. CONNELLY. Mr. Chairman: I desire to offer the following substitute.

The CHAIRMAN. The substitute will be received.

The Secretary read the substitute as follows:

The net indebtedness of any municipality shall not exceed in the aggregate ten per centum of the assessed valuation of the taxable property therein. Such net indebtedness shall be ascertained in the manner prescribed by the general assembly. The municipal authorities in incurring new debt to an amount in excess of two per centum of the assessed valuation of the taxable property shall submit the question to the electors at a public election in the manner provided by law, and such new debt shall be incurred only with the consent of a majority of the electors voting thereon. No county, township, borough or other municipality, except the city of Philadelphia, having a net debt in excess of seven per centum of the assessed value of taxable property shall incur new debt without the consent in like manner of three-fifths of the electors voting thereon. In calculating the debt of a municipality for the purpose of ascertaining its borrowing capacity, there shall be deducted from its existing debt:

(a) Any indebtedness authorized or incurred for public improvements to the amount to which such indebtedness is or shall be secured by liens on the properties acquired or to be acquired in furtherance of such improvements, and as to which no municipal obligations will be imposed.

(b) So much of the debt of any municipality as shall have been incurred and the proceeds thereof invested in any public improvement of any character which shall be yielding to the said municipality an annual current net revenue. The amount of such indebtedness shall be ascertained by capitalizing the annual net revenue from such improvement during the fiscal year immediately preceding the time of such ascertainment; and such capitalization shall be estimated by ascertaining the principal amount which will yield such annual current net revenue at the average rate of interest and sinking fund charges payable upon the indebtedness incurred by said municipality for such purposes up to the time of such ascertainment. The method of determining such amount to be deducted shall be as provided by law.

(c) Where a municipality shall incur debt to acquire any public improvement which for a period of five years immediately preceding its acquisition shall have been earning net income sufficient on the average to pay the annual interest and sinking fund charges on such debt, the debt so incurred may be deducted in such calculation, but no deduction shall be made therefor if a deduction be made under clause (b) hereof of the same indebtedness.

Mr. ENGLISH. Mr. Chairman: I second the substitute.

On the question,

Will the Committee adopt the substitute?

Mr. FISHER. Mr. Chairman: I move to amend by substituting for the substitute offered by Mr. Connelly the following to cover the first, second and third paragraphs of the report of the Committee, which includes all of the report up to clause (a).

The Secretary read the substitute as follows:

Section 22. A municipality shall have the power, in the manner provided by law, to incur an indebtedness to an amount not exceeding ten per centum upon the assessed value of the taxable property therein, but no indebtedness shall be incurred or no increase thereof made in excess of three per centum of such assessed valuation, except with the assent of a majority of the electors of the municipality voting at a public election.

On the question,

Will the Committee agree to the amendment?

DEBTS OF MUNICIPALITIES.

Mr. PEPPER. Mr. Chairman: If it is not an interruption to Senator Fisher, I was going to ask whether it would be possible for the enlightenment of the rest of us to have a statement from Mr. Connelly as to the particular in which his amendment differs from

the report of the committee, and then we will understand better the significance and the object of Senator Fisher's amendment.

Mr. CONNELLY. Mr. Chairman: The only change in my proposal is as you will find on page 4, section 22. I used the words "the net indebtedness," the municipality shall have power to incur indebtedness. I used the words "the net indebtedness of any municipality shall not exceed in the aggregate ten per centum," that is the only difference, the word "net."

Mr. PEPPER. Mr. Chairman: Is that the only difference all the way through?

Mr. CONNELLY. Mr. Chairman: That is the only difference all the way through. I then follow in that section the present amendment to the Constitution which gives the right of incurring indebtedness to ten per cent to all cities, and then I followed the amendment, owing to local conditions that I was not competent to consider or disturb, which you find on page 61 of the Compilation, article XV, in relation to Pittsburgh and some other cities where it requires for a ten per cent increase a vote of three-fifths of the people. Then the clauses (a), (b) and (c) carry out the constitutional amendment heretofore adopted applying to Philadelphia and other cities of the state in relation to loans and where there is a five-year period and where there is a one-year period.

Mr. PEPPER. Mr. Chairman: I thank you.

The CHAIRMAN. May the Chair ask whether Mr. Fisher's amendment would be workable as a substitute for either proposition, that is, as an amendment to either one?

Mr. FISHER. Mr. Chairman: Certainly, if this were adopted. My thought was to simplify the language, to reduce the amount of verbiage, and raise the borrowing capacity of all municipalities to ten per cent, and raise the amount which may be incurred by the municipality from three per cent upon the assessed valuation of the property and then follow with the deductions set forth in clauses (a), (b) and (c) with one or two slight amendments.

Mr. CONNELLY. Mr. Chairman: If I understand the gentleman's thought, he still wants to allow ten per cent, and that would apply to other cities, the ten per cent upon three-fifths of the vote of the people instead of for two per cent, to add three per cent. Is that the real thought?

Mr. FISHER. Mr. Chairman: Yes, sir.

Mr. CONNELLY. Mr. Chairman: I accept the amendment.

Mr. ENGLISH. Mr. Chairman: What would we do with the other sections which have been worked out so ingeniously in the city of Philadelphia for the purpose of increasing the borrowing power by eliminating from the computation certain assets of the municipality?

Mr. FISHER. Mr. Chairman: Just for the sake of clarity, I would amend clause (a) by striking out after the third line the words "the properties acquired," and insert in lieu thereof the words "such improvements."

The CHAIRMAN. Is that amendment accepted?

Mr. CONNELLY. Mr. Chairman: No. I think perhaps the Senator may withdraw his amendment. I followed the present Constitution in relation to clause (a), for example, "and indebtedness authorized or incurred for public improvements to the amount to which such indebtedness is or shall be secured by lien on the property ac-

quired, or to be acquired in furtherance of such improvement, and as to which no municipal obligation will be imposed." I followed the exact language of the present Constitution because that applies to conditions entirely outside of Philadelphia, of which I have no particular knowledge. I do not want to put anything in this Constitution to interfere with those rights, whatever they may have been.

Mr. FISHER. Mr. Chairman: The language seems to me to be somewhat restricted in itself, although it is in the present provision of the Constitution, but the—

Mr. CONNELLY. Mr. Chairman: Exactly.

Mr. FISHER. Mr. Chairman: But the amount of indebtedness incurred for public improvements, that would be any kind of public improvements, is secured by liens on the property acquired. Now, what is the force and effect of the word "acquired?" Well, we usually apply it to property we get by conveyance of some sort. We acquire it through a deed of conveyance or conveyance of lease. And the word "acquire" would seem to eliminate facilities or improvements which the municipality constructed originally for itself. Now I thought that might be clarified and broadened by inserting the words "such improvements," however acquired. Then in clause (c) I would amend by striking out in the second line the word "current" and insert in lieu thereof the word "legal," so that instead of reading "at the current rate of interest," which is more or less fluctuating, it would read "at the legal rate of interest," which is always ascertainable and gives you a basis upon which to make a computation.

Mr. CONNELLY. Mr. Chairman: I accept both of those amendments.

The CHAIRMAN. Both of Mr. Fisher's substitutes are accepted by Mr. Connelly, and Mr. Connelly offers his substitute as amended by Senator Fisher's amendments for the report of the Committee.

Mr. PEPPER. Mr. Chairman: May I ask Senator Fisher through you whether in his judgment there is anything to be gained by substituting in clause (b) after the expression "sinking fund charges," the phrase "amortization charges?" I understood that Senator Fisher had proposed an amendment to clause (c).

Mr. CONNELLY. Mr. Chairman: We did not amend that. We followed out the constitutional amendment previously made.

Mr. FISHER. Mr. Chairman: On this clause (c)?

Mr. PEPPER. Mr. Chairman: That is what I understand. I understand that Senator Fisher proposed an amendment to clause (c), merely to substitute the word "legal" for "current" in the second line. Then my question ought not to have been addressed to Senator Fisher, but to the mover of the resolution, whether it would be advantageous to substitute the word "amortization" for "sinking fund" in the two cases where it occurs, the thought that I have in mind being that it is well to provide in this section for a case in which we have a serial loan and not a sinking fund, but levy a tax provision for amortization.

Mr. CONNELLY. Mr. Chairman: I have no objection.

Mr. PEPPER. Mr. Chairman: The suggestion is acceptable to the gentleman that "amortization charges" be substituted for the "sinking fund charges" in the two clauses where those words occur, namely clauses (b) and (c).

The CHAIRMAN. The Chair will so understand.

On the question,

Will the Committee adopt the substitute as amended?

It was adopted.

The CHAIRMAN. Section 23 was omitted from the calendar by mistake.

NEW ARTICLE, SECTION 23.

The CHAIRMAN. The next section in order for consideration is section 23 of the proposed new article of the Constitution, the report of the committee being that section 10 of article IX and section 3 of article XV be dropped from the present Constitution and become section 23 of this article.

The Secretary read the proposed section as follows:

Section 23. A municipality shall not incur any indebtedness to run for more than fifty years, and shall at or before the time of incurring such indebtedness provide for the collection of an annual income tax sufficient to pay the interest and also the principal thereof at maturity, and shall create a sinking fund which shall be inviolably pledged for the payment thereof; provided, that certificates of indebtedness or other obligations to mature within the current fiscal year may be issued in anticipation of the collection of current revenues.

On the question,

Will the Committee agree to the report?

Mr. PEPPER. Mr. Chairman: I offer the following substitute.

The Secretary read the substitute as follows:

Section 23. A municipality shall not incur any indebtedness to run for more than fifty years, and it shall be optional with the municipality whether the serial method or sinking fund method of repayment shall be adopted. In case the serial method is adopted, the municipality shall, at or before the time of incurring such indebtedness, provide for the collection of such annual tax as shall be sufficient to pay the total interest and the proportional part of the principal maturing each year. In case the sinking fund method shall be adopted, the municipality shall at or before the time of incurring such indebtedness provide for a sinking fund sufficient to discharge the indebtedness at maturity and inviolably pledged to such use, and shall further provide for the collection of an annual tax sufficient to pay interest and meet sinking fund requirements, certificates of indebtedness or other obligations to mature within the current fiscal year may be issued in anticipation of current revenue.

On the question,

Will the Committee adopt the substitute?

Mr. CONNELLY. Mr. Chairman: I offer the following substitute for section 23.

The CHAIRMAN. The substitute will be received.

The Secretary read the substitute as follows:

Section 23. In incurring indebtedness any municipality may issue its obligations maturing not later than fifty years from the date thereof, and except as herein provided, shall create a sinking fund sufficient to retire such obligations at maturity, to which purpose said sinking fund shall be inviolably pledged. The payments to such sinking fund may be in equal or graded annual or other periodical installments. But such obligations may be made to mature serially, beginning one or more years after the date thereof, and not extending beyond fifty years from such date. No municipality shall incur any indebtedness unless it shall at or before the incurring thereof provide for the collection of an annual tax sufficient to pay the interest and also the principal of such debt at maturity. When serial obligations shall be issued as herein provided, the proceeds of the tax levied to pay the principal thereof shall in lieu of payment into a sinking fund be used for the discharge of such serial issues as they shall respectively mature; provided, that certificates of indebtedness or other obligations to mature within the current fiscal year may be issued in anticipation of the collection of current revenue. Where any indebtedness shall be incurred by any municipality for the purpose of the construction or acquisition of public works of any character, from which income or revenue is to be derived by said municipality, or for the reclamation of land to be used for the construction of wharves or

docks owned or to be owned by it, such obligations may be in an amount sufficient to provide for and may include the amount of the interest and sinking fund or serial charges which may accrue thereon throughout the period of construction or acquisition and until the expiration of one year after the completion thereof, but not extending beyond five years from the incurring of such debt, and said municipality shall not be required to levy a tax to pay said interest and sinking fund charges until the expiration of the said period of one year from the completion of such construction or acquisition.

On the question,

Will the Committee adopt the substitute?

SINKING FUND.

Mr. PEPPER. Mr. Chairman: I will accept the substitute and amendment of Mr. Connelly in lieu of my proposal. If I got those provisions with accuracy and fullness, I think they safeguard some things that were omitted from the proposal as I originally made it. I was particularly anxious to cover the point that where you issue serial bonds there should be a precedent provision for a tax levy to care for their maturity, and that is very carefully covered by Mr. Connelly's amendment, if I caught it.

Mr. CONNELLY. Mr. Chairman: "When serial obligations shall be issued as herein provided, the proceeds of the tax levied to pay the principal thereof shall in lieu of payment into a sinking fund be used for the discharge of such serial issues as they shall respectively mature."

On the question recurring,

Will the Committee adopt the substitute?

It was adopted.

NEW ARTICLE, SECTION 24.

The CHAIRMAN. The next section in order for consideration is section 24 of the proposed new article of the Constitution, proposed by Mr. Pepper.

The Secretary read the section as follows:

Section 24. The general assembly may for the purpose of administering any general law divide the state into one or more districts, and may create in each district one or more administrative agencies composed of all persons of a defined class or classes in the district subject to the provisions of the law, and impose on such agencies the duty of carrying out the law among their members. Administrative agencies shall not be construed to be municipalities, or subject to the provisions of this Constitution pertaining thereto unless the general assembly so provides.

On the question,

Will the Committee adopt the proposed section?

ADMINISTRATIVE AGENCIES.

Mr. PEPPER. Mr. Chairman: This section represents a proposal which it would not have occurred to me to suggest, because my thought has not run along the lines that this proposal follows, but my attention having been called to the subject-matter, it did seem to me to be highly important that the subject should be presented to the Commission for its consideration; hence the pending resolution. I think perhaps I can make the meaning of the proposal clearer by taking a particular illustration. If it be assumed that the war risk insurance set on foot by the government of the United States were to be continued as a permanency, I think it that before long all persons holding

these government policies would necessarily have been associated in some form of legal or voluntary association for the protection of their own interests and for the purpose of taking the necessary action in connection with the selection of those who were to administer the interests and generally determine the questions that arise in connection with such administration. This section is a proposal that the general assembly shall be empowered in cases like the one that I have suggested to provide a form of association for all those persons affected by the operation of the general law to the end that the law may be properly administered according to its intent and purpose. If, for example, the existing commission on the subject of health insurance should report to the legislature of Pennsylvania an act of a general character providing for the type of insurance which the commission has under consideration, the act would require an administrative machinery. That administrative machinery would be personal as distinguished from local. That it is to say, it would be a machine made up of people affected by the operation of the law, as distinguished from the delimitation of an area of geographical division of the state such as we are accustomed to think of when we create municipalities or districts for governmental or political purposes. Here is a proposal that the general assembly might create an administrative agency composed of all persons affected by the health insurance act with certain powers respecting the choice of those who are to administer the act, and such other matters as the general assembly might see fit to refer to the determination of those who are affected by the provision of the statute. If there was to be an act on the subject of arbitration for the adjustment of difficulties between employer and employee and administrative provisions guarding all those affected by the act, an agency for the purpose of carrying its provisions into effect would be in order. Under such a condition as this the provision might have application also to associations in connection with the administration of the workmen's compensation law and other acts of general application touching great numbers of persons who because they are affected by the act become subject to a bond of association growing out of the fact that they are thus affected. It seems to me proper to give to the general assembly the right to deal with these people in that capacity, and as thus bound together, to the extent that it may be necessary to effectively administer the law and carry out its purpose. It is to give the general assembly that right, a new thing in our system, that this section has been proposed. I see no objection to it. It seems to me to be a proper form of legislation, and I am told that there is likely to be real need for it. Under those circumstances I feel warranted in introducing the amendment. It will be observed that the section safeguards what otherwise would be an implication, namely, that the agency thus created would be a municipality within the constitutional definition of that term, and this section provides that the agencies thus created shall not be municipalities within the meaning of the Constitution unless the legislature specifically includes them in that class.

The CHAIRMAN. As the Chair gathers from the reading of the section—and possibly from Mr. Pepper's explanation—the Chair is afraid it would be construed to decentralize the state government, and the whole drift of things in the state government is to centralize the state government in Harrisburg. For that purpose we are going

to build great office buildings here, because we are going to call in all the agencies of the state, such as the state workmen's compensation bureau, so that they will function here, the experience being—I am stating these things for the information of the Commission—that when the agencies of the state get far away from the center they lose contact with it and cannot be properly and well administered. Therefore, as the wording of the section would permit a decentralization of the power, it might be a dangerous experiment in state government and against the whole trend of things in the state government as it is now intended to be worked out.

Mr. REED. Mr. Chairman: May I ask whether there is anything today to prevent the state, if you find it necessary, to create an agency in the city of Pittsburgh for some purpose?

The CHAIRMAN. That is done. We have created an agency in Philadelphia, the workmen's compensation board, and in Pittsburgh and in Scranton, and so on, but they are centering more, and we are gathering them more and more here. We find that makes the best administration, at least it seems so to us.

On the question recurring,

Will the Committee adopt the proposed section?

It was not adopted.

NEW ARTICLE, SECTION 12.

The CHAIRMAN. The next section in order for consideration is section 12 of the proposed new article of the Constitution, the report of the special committee on local government being that the new section shall read as follows.

The Secretary read the section as follows:

Section 12. Cities, or cities of any particular class, may be given the right and power to frame and adopt their own charters and to exercise the powers and authority of local self-government; subject, however, to such restrictions, limitations and regulations as may be imposed by the legislature. Laws also may be enacted affecting the organization and government of cities and boroughs, which shall become effective in any city or borough only when submitted to the electors thereof and approved by a majority of those voting thereon.

On the question,

Will the Committee adopt the report?

Mr. REED. Mr. Chairman: Was not that argued out last week? I thought we went over that "home rule" proposition.

HOME RULE.

Mr. ENGLISH. Mr. Chairman: If the gentlemen will bear with me for a moment I would like to explain to the Commission the distinction between this proposal and that which was acted upon last week. I regret very much that we are approaching the close of the session, and that many of us are anxious to go. It does seem to me that the matter is of rather urgent importance, and one that we ought not to fail to express in some form in the tentative draft of the Constitution of the state. The section which has just been read is a literal rescript of joint resolution No. 4 which was adopted by the legislature in 1919. I speak of that because it indicates that there is a very sound and very pronounced public sentiment behind this provision. It was prepared, I am informed, by the legal committee of the league of third class cities, consisting of thirty-five

municipalities, ranging in population from ten to one hundred thousand people. The section in question is distinguishable from those acted upon last week in that this section removes the constitutional barrier which would stand in the way of the legislature's granting to municipalities of the state the home-rule provision as the legislature in its judgment sees fit. The difficulty as I find it, Mr. Chairman, in examining this question has been reached when an attempt is made in the Constitution to draw the line of demarcation between the powers that are essentially local and that ought to be left to the municipality and the powers that are essentially general and ought to be retained by the state. Perhaps that difficulty was threshed out last week in the discussion of this question. It seems to me that the solicitors of the third class cities have met the issue squarely by preparing this section which leaves to the state through its legislature the right to determine what local powers should be delegated to the municipalities. Therefore there would be no difficulty of construction at any time, because I think it may reasonably be inferred that the legislature would only delegate to the municipalities the powers that they ought to have.

I think that the latter part of the section is especially important, because without it the section would not be very effective. When the legislature has determined the character of the local powers that ought to be left with the municipality, it seems to me that having defined the local jurisdiction of the city the legislature ought not to be in a position to take away the powers granted without the consent of the people. Now let me illustrate what I have in mind by one or two examples. Heretofore in Pennsylvania, as was pointed out in the preceding debate, we have proceeded upon the administrative agency theory, so far as cities are concerned, that they are mere agencies of the state and that their powers could be taken away and their boundaries changed at any time the state decides to do so. In the third class city act of 1913 the legislature imposed upon the thirty-five municipalities a form of government popularly known as the commission form of government. There was a great deal of objection to it from various cities which were not satisfied with it. Personally I believe it to be a good thing, but the framework was prepared here and sent on to these various communities and imposed upon them, and it was necessary legally that they adopt it and comply with it, which was done. Now, one of the benefits of that act of assembly was the nonpartisan election of local officers. It was put into operation in the election of 1914, and has been adhered to ever since. In the last session of the legislature, because of some possible partisan advantage somebody thought might be gained by it, a short act was put through the legislature repealing the nonpartisan feature of the act of 1913 so far as it concerned cities of the third class, so that in the last election the people who had become accustomed to this other method of election found themselves, without being consulted at all, suddenly turned back on the old method of electing local officers. Now, that sort of thing was naturally the cause of a great deal of resentment. Again, a city that in the present census shall exceed in population one hundred thousand people will find that it must absolutely change its form of government. Under the act of 1913 there was a combination in the council of five persons of the executive-administrative functions of third class city gov-

ainment. That combination has been severed as to second class cities, and the council is purely a legislative body, and the administrative functions are taken care of by the mayor and heads of departments, notwithstanding the fact that they still have the same community accustomed to a particular form of government. Because of the mere accident of an increase in population which does not raise or create a single local problem, it is necessary absolutely to change the local form of government of the people.

Now, I submit that in all likelihood when the provisions of this section are taken advantage of by the legislature that the people will be permitted to prepare for themselves a form of government which they like. After all, it is purely a local matter, the framework of the government is something which concerns the people of the locality alone—the framework of local government I mean—they pay the taxes. The problems of these thirty-five municipalities in the third class are no more similar than is their climate, or their topography, or their geographical situation. It was touched upon in the preceding debate that there might not be that uniformity of government to which we have been accustomed. To my mind that is not an objection to this section. If the legislature sees fit to delegate to the municipality that portion of its legislative power which is necessary now to enable the municipality to make its own framework of government, it seems to me that there is no necessity of having them all alike. They are not alike at the present time. In northwestern Pennsylvania we have to the east of us the city of Buffalo, in the state of New York. We have on the west of us the city of Cleveland, in the state of Ohio. We are nearer to them commercially and personally, I think, than any other city in the commonwealth of Pennsylvania. Our intercourse is more frequent with them, and yet their government or framework for their local government is as different from ours as from each other. We have on the south the city of Pittsburgh, a city of the second class, with an entirely different form of government. So I submit that there is no reason why necessarily communities which are different in population, which are different in location, which are different in climate, which are made up of people of entirely different views, and which have entirely different problems, must all be fitted on some sort of corresponding basis and made to adopt the same form of government. There is no reason for it. The clear trend of modern thought is in the direction of allowing these municipalities to select their own form of government. It seems to me that thought is crystalized or expressed in this section, which is merely a rescript of the resolution adopted by the legislature at the last session, and that we will be ignoring the trend of the times unless we take cognizance of that fact. Now, in all the forms of home rule that are discussed, and find expression in the constitutions of the various states, and there are many other forms, this is the very mildest because it leaves it entirely to the state to declare through its legislative agency the kind of power that will be given to the municipality. But once the powers are conferred they ought not to be ruthlessly taken away because undoubtedly they will be essentially local in their government. Now, it may be determined that these rights ought to be limited to the necessities of the city. The section as provided by the city solicitors includes boroughs. Personally I would have no quarrel with that situation, but I think it proper to report, with the consent of the

other members of the committee, the section exactly as it has been prepared by the city solicitors and exactly as it has been formally expressed in a joint resolution of the legislature.

MR. ALTER IN THE CHAIR.

Mr. SCHAFFER. Mr. Chairman: I am opposed to this section, little as I like to differ with my friend from Erie. I have lived all my life in a city of the third class. I happen to represent professionally other municipal units of the state. I am counsel for one of the largest first class townships and counsel for one of the boroughs in my county. I have had to be familiar with the third class city legislation in the capacity of city solicitor or because interests I represent have been vitally affected by the form of government that they have. I do not want to repeat the arguments which I made here last week, or have made before; I only want to state the general proposition, and that is, that I am unalterably opposed to localism in government of the municipality. I think home rule is an utter misnomer, when you consider the legislation which exists for the municipalities in this state. I think it would be a disastrous thing for Erie to be more closely tied up with Buffalo and Toledo than with those of us in Pennsylvania who are interested in her. I want to keep up the association and the relation between my city down in the southeast corner of the state with Erie up in the extreme northwest corner. I think it is a fine thing for the state that we should be associated together and should have the same interests. My friend, Mr. English, brought a member of his own bar in to see me last week about a matter of very great concern to the city of Erie, affecting one of its very large industries. The problem that he presented to me coming from Erie was precisely the same kind of problem I had to consider for a large industry in my own town. Erie is located on the Great Lakes, and we are located on the great river that dips into the sea, and so I found that his problems were my problems. In going over the third class city act together in trying to get light on the problem that he had to submit which the city was concerned in, it was extraordinary the number of interests that we had in common so far as the waters we bordered upon were concerned. This provision would end all that. We would know nothing about Erie or its government; we would know nothing about Harrisburg or its government; and we would have absolutely no community of interests. The things that may be done in other states are not applicable, as my investigation shows, to the situation in Pennsylvania, for the reason that in New York they legislate for the cities by name. They do not even legislate for them in classifications. The same thing is true in Ohio, and the same thing is true in a great many other states. Now I think under the system of classification that we have adopted—classifying the cities in seven classes—all the cities will fit in together in a scheme that relates their affairs in the different classes each to the other. Now this provision provides that cities, or cities in particular classes, may be given the right and power to frame and adopt their own charters and to exercise the power and authority of local self-government, subject, however, to such restrictions, limitations and regulations as may be imposed by the legislature. That would affect principally cities of the third class.

I have here the third class city act, with every amendment that has been made to it. There is not, and there cannot be, a broader and more comprehensive system of government than that provided by the third class city act. I think it is a fine thing for the state that all of the city solicitors gather together. They do not all agree, but there is an accommodation finally of view, and there is a community of interest that is of great advantage to the state, and that would be to the disadvantage of the state if each of those municipalities went off on its own hook and on its own account. My friend from Erie and I may differ on the question whether the election of commissioners in the cities by a non-partisan system of election is or is not a good thing. I was in favor of going back to the partisan system because I thought it gave the municipality, the citizens of the municipality, better control than it did if they were elected on a non-partisan ballot. Our commissioners the last time were elected on partisan nominations, and we got as a matter of fact the same men as we would have gotten if they had been elected on a non-partisan ballot. But the consensus of opinion was that the act should be changed in that respect. If that does not work out well then the thirty-five cities will get together, or the number that are in the various classifications, and they will work out a system that, measured by the state at large, will be an advantage to the state, and it seems to me an advantage to the municipality. Now, in this third class city act there are the broadest provisions of government that can be imagined, broader than the first class city is, broader than in the first or second class city acts. In this act there is an initiative and there is a referendum on a twenty per centum petition of the electors of a municipality. I would not be personally for the initiative, I am opposed to the initiative, and I am opposed to the referendum; but they are there, and under that system of government the cities can initiate legislation, and initiating legislation, it can not be changed in council and it must be submitted as initiated by the initiative petition. That is the principle of the referendum, and all legislation or ordinances passed by city council can come back to the people on petition of the people for a referendum vote, whether or not that shall be approved. So that within the municipality itself—and the framework of the government must be, it seems to me, on the general lines of this kind of framework of government—the largest share of home rule that can be imagined is already guaranteed to all of the citizens in cities of the third class. The amendment goes on to provide also that laws may be enacted affecting the organization and government of cities and boroughs which shall become effective only when submitted to the electors thereof, and approved by a majority of those voting thereon. Now, if that is a good system, it must be a good system for every municipal division of the state.

It would not be right to say, for instance, that the great township of Lower Merion, which in the census of ten years ago had over eighteen thousand people, and which today very likely has thirty-five thousand, should be denied, because it is a township of the first class, the right to change its government, when just a few miles off is Coatesville, which is a city of the third class, with less population than Lower Merion, and which would have the right to change its form of government. Now let us see where we would land on this. As I say, I am solicitor for one of the boroughs in my county.

If I recall correctly, there are twenty-two boroughs in that small county geographically in which I live. There are eight boroughs between the city of Chester and South Philadelphia, less than eight miles distant. Under this, let me say, that the borough code, which I also happen to have here—and I would like to give to Mr. English a set of these, because there is every decision of the supreme court and every amendment of the acts in both third class cities and boroughs and first class townships that have been passed and rendered—confers a very large measure of home rule. With those eight boroughs what would happen? The legislature has passed a general borough code. It is as scientifically drawn a piece of legislation as can be imagined. I had no part in the drawing of it, but I have operated under it ever since it was drawn for the boroughs I represent. I have to deal, as every active lawyer has to deal, with these municipal divisions in my county, and we all think of things in the local way, because that is the way they present themselves to us. Now what would happen, and it might happen to the gentlemen of the Philadelphia bar, the legislature might pass another code, and of the eight boroughs down between Chester and Philadelphia some of them adopt it, others veto it under this amendment. Then what do you have? Why just as soon as you do that you cannot legislate generally for boroughs at all. And how do they get their charters? In what form would they be? Where would they exist? They would exist on the minute book of the borough or in the courthouse, or some place registered as a charter. Where would there be any safety in dealing with the municipal division, when you come to pass on questions of loans hereafter, if there was such a mix-up in government as that would be? Boroughs would be divided by streets as their boundary lines. You step on one side of the street and that borough has one form of government, and you take two steps and go over on the other side of the street and that borough has another form of government. I think that ought not to be in a great state like this. I think there ought to be absolute uniformity in the borough governments throughout the state, because, as I say, this borough code was drawn by the borough solicitors. It was drawn by them in conference with the Legislative Reference Bureau, and I think better put together, is more scientifically drawn, than the township code or the third class city act. Now, when it comes to the act regulating the affairs of first class townships—and my experience with first class township government is that it is one of the best forms of government that was ever devised—there are great growing areas governed entirely by it. Lower Merion in Montgomery county, Radnor, Haverford, Upper Darby, Ridley township in my county, and great townships in the coal districts are all governed by this first class township act. In some of the first class townships like Lower Merion the population is, as I referred to a moment ago, in excess of almost any borough in the state.

I helped to draw this act, as one of the solicitors of the first class townships, and therefore I cannot say what I have said about the other, but what I can say is that it has successfully worked out in widely different and diverse sections of the state, and has worked out in broad lines to the satisfaction of the people who live in the various communities. Now, if it is the right thing that the twenty-two boroughs in my county shall have twenty-two different forms of

government, if it is the right thing that thirty-five cities of the state shall have thirty-five different forms of government, then it seems to me that all the first class townships ought to have the same right, because they have the legislative function which second class townships do not have; they too ought to have, each one of them, the right to local self-government. Then what do you have? Why we have that crazy-quilt of municipal government in Pennsylvania that does not have its equal in any other great state in the country. Therefore, I am opposed to it. I am opposed to it because while there may be some differences between what I and my friend from Erie may think, we should for the most part be harmonized. There are fifty different sections of the third class city act which give the council of the city power to legislate, and they cover every conceivable form of thing that I can imagine, and if there are not enough come down here and amend it and increase the power. Therefore, what we are proposing to put into this Constitution, it seems to me, is just what faced the state prior to 1873. Unless all the cities are to be legislated for in classes they must be legislated for by special legislation, because if you cannot legislate by class then you must have your legislators say that each of the thirty-five, and more, because there will be one more in my county in a short time, shall be legislated for separately, and you will have special legislation for every city in the state, because you cannot legislate in any other way. The minute one of the thirty-five third class cities drops out of the classification and sets up its own government you will have to legislate for that particular city, although legislation may be general for the other thirty-four, and as each one drops out the special legislation becomes more and more special and finally it becomes legislation for each individual community. There might be hundreds of boroughs who might refuse under the last clause of the amendment to accept the legislation that the legislature lays down generally for them; each one would become a special class and would have to be legislated for specially. So it would go with townships of the first class. If the principle is right, then the legislature would be legislating in terms for Lower Merion, in terms for boroughs in Indiana county, in terms for the city of Erie, and for the boroughs of Erie county, and we would be right back to the special legislation that led to the Constitution of 1873 because of this abuse. Now that is the thing that we have to guard against by extending the classes in the amendment which we have already adopted naming seven classes of cities. My friend from Erie, for whose fine mind and clarity of statement in the discussions that have gone on in this commission I have a respect that is very high, I do not want to see him go out and flock with Toledo and Buffalo, but I want to see him stay here and flock with us down in Chester and with the other third class cities of the state and become a still closer partner. That is why I am opposed to the pending resolution.

Mr. FISHER. Mr. Chairman: May I ask Mr. English the meaning of the provision in the latter part of the section where the language is that "laws also may be enacted affecting the organization and government of cities and boroughs which shall become effective in any city or borough only when submitted to the electors thereof, and approved by a majority of those voting thereon?" Do I understand that this is to give the municipality the power to

say whether or not they shall be subject to the provisions of the general law?

Mr. ENGLISH. That, Mr. Chairman, is not my understanding of the provision at all. Both sentences of the section must be read together. In the first instance it is up to the legislature to determine, subject to whatever regulations it may see fit to impose, the kind of local powers that may be conferred upon the municipality. The second section, or the second sentence, merely is intended to say that after the legislature has defined the powers and conferred them upon the municipality then those powers cannot be taken away without the consent of the majority of the people.

Mr. THORPE. Mr. Chairman: In addition to the powerful defense made by the Attorney General, and not to trespass upon the patience of the Commission, permit me to call attention to the very great peril that lies in this law. In the last fifteen years it has become the fashion to educate young people that home rule is the thing. I call your attention to that, Mr. Chairman, because it is universal throughout the Union, in so far as I can judge from the curriculum of the universities and colleges and technical law schools. Now, Mr. Chairman, uniformity has made us what we are, not diversity, and I think that is the gist of it, uniformity and not diversity. You know as well as I that every little locality thinks that the axis of the earth sticks right up through it, and if you will let every little locality vote upon these questions you will have such a crazy-quilt as you have never seen before. I do not believe in home rule. I did, but I got over it. I do not believe it is worth while. I believe it is just a phase of popular fancy. It is a matter something like prohibition, and it is going to have its day. I think that we are going to make a very great mistake if we are going to allow every little community, whether it is as big as the dear old city of Erie or as small as any of the little townships, to change and make their own laws and ignore the central legislative body. And so it is, Mr. Chairman, to free my mind, as a member of the Commission, to say that I cannot vote for home rule.

On the question recurring,

Will the Committee adopt the section?

It was not adopted.

NEW ARTICLE, SECTION 19-A.

The CHAIRMAN. The next section in order for consideration is section 19-A of the proposed new article of the Constitution, the report of the special committee on local government being that the section shall read as follows:

The Secretary read the proposed section as follows:

Section 19-A. The general assembly may by law regulate or restrict or may authorize any municipality to regulate or restrict advertising on public ways, in public places and on private property within public view.

On the question,

Will the Committee adopt the report?

Mr. REED. Mr. Chairman: Is not the legislature given that power now?

Mr. ENGLISH. Mr. Chairman: I think the question might arise that the supreme court might hold that under the police power of

Pennsylvania, within the meaning of the Constitution, the legislature would not have that power, and therefore, in order to put that particular question beyond controversy, it might be well to incorporate specifically this power in the Constitution itself.

On the question recurring,

Will the Committee adopt the report?

It was not adopted.

ARTICLE XVIII, SECTION 1.

The CHAIRMAN. The next section in order for consideration is section 1 of article XVIII of the Constitution, the report of Committee No. 5 being that it be adopted without change.

The Secretary read the section as follows:

Section 1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives; and, if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if in the general assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the state in such manner and at such time at least three months after being so agreed to by the two Houses, as the general assembly shall prescribe; and, if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years. When two or more amendments shall be submitted they shall be voted upon separately.

On the question,

Will the Committee adopt the report?

FUTURE AMENDMENTS.

Mr. SCHAFFER. Mr. Chairman: Is that the question relating to amendments?

Mr. ENGLISH. Mr. Chairman: As I understand it, we are now discussing the report of the Committee so far as it relates to constitutional amendments.

The CHAIRMAN. That is correct.

Mr. GORDON. Mr. Chairman: I think this section ought to be changed, and I think amendments ought to be easier than they are, but it is too late to discuss the matter at this time and I think it can very well go over to a later meeting of the Commission.

Mr. ENGLISH. Mr. Chairman: May I say that the committee reported it without any special consideration, simply to put it up on the calendar so that it may lend itself to any suggestion which any member might see fit to make?

On the question recurring,

Will the Committee adopt the report?

It was adopted.

MR. SCHAFFER IN THE CHAIR.

ARTICLE V, SECTION 12.

The CHAIRMAN. The Chair desires to offer the following as a substitute in lieu of the substitute offered by him this morning in order that it may be in accord with the amendments made to it.

The Secretary read the substitute as follows:

Section 12. The general assembly shall provide for the division of the county of Philadelphia into eighteen numbered districts of compact territory, as nearly equal in population as shall be possible. After each United States decennial census the court of common pleas may change the boundaries of any districts and may create new districts, the number of which, however, together with the districts in existence, shall never exceed more than one for each one hundred thousand of population of said county.

A court not of record of police and civil causes, to be known as a district peace court, and with jurisdiction not exceeding three hundred dollars, is hereby established in each of such districts, to be composed of one judge learned in the law and who shall be known as a district peace judge. Such court shall have such civil and criminal jurisdiction as is from time to time exercised by justices of the peace. The general assembly may change their powers and jurisdiction, but no law shall be passed increasing the amount of their civil jurisdiction or imposing on them political duties. It shall also regulate the costs of proceedings in such courts and shall provide for the relief of persons who by reason of poverty are unable to pay such costs. Rules of practice and procedure shall be prescribed by the court of common pleas of Philadelphia county.

Judges shall be chosen at a municipal election by the qualified electors of the respective districts and shall hold office for a term of six years from the first Monday of January next ensuing, if they shall so long behave themselves well. Such judges shall have been inhabitants of their respective districts two years next before their election (unless absent on the public business of the United States or of this state), and shall reside in their respective districts during their terms of office. They shall be removed from office for reasonable cause by the court of common pleas of the county and upon petition signed by at least five hundred inhabitants of the proper district or in the manner prescribed by article VI of this Constitution.

Vacancies in the office of district peace judge shall be filled by the Governor.

The said judges shall receive a salary for all services rendered in any judicial proceeding, which shall be in lieu of all other compensation, and which shall be fixed by law and paid by the county. All fees received for any such service shall be paid into the county treasury for the use of the county.

Magistrates now in office shall serve out their unexpired terms, after which time the office of magistrate and magistrates' courts in Philadelphia are hereby abolished.

The general assembly shall, upon the adoption of this Constitution, enact such laws and may be necessary to fully carry into effect the several provisions of this section.

On the question,

Will the Committee adopt the substitute?

DISTRICT PEACE COURTS IN PHILADELPHIA.

Mr. GORDON. Mr. Chairman: I have a suggestion to section 12. I suggest the following change in section 12: As it reads now, it is "The general assembly shall provide for the division of the county of Philadelphia," and I suggest that that be changed, "The general assembly shall divide the county of Philadelphia," so that they shall in the first instance make the division. I also suggest the following changes in the clause with respect to the removal of district peace judges in Philadelphia by the common pleas court: As it is introduced now, it is, "They shall be removed from office for reasonable cause by the court of common pleas of the county upon petition signed by at least five hundred inhabitants." I suggest this change, the insertion of the word "found" after the word "cause," and the insertion after the word "county" the words "after hearing," and the insertion after the word "petition" the words "setting forth said cause," so that the clause will read, "They shall be removed from office for reasonable cause found by the court of common pleas of the county after hearing and upon petition setting forth said cause signed by at least five hundred inhabitants." The other suggestion which I was going to make, I presume I shall not make in view of what one of the deputy attorneys general in conversation has said to me; the clause reads, "said judges shall receive a salary for all ser-

vices rendered in any judicial proceeding, which shall be in lieu of all other compensation." I intended to leave out the words "in any judicial proceedings" and change it so as to read that "said judges shall receive a fixed salary," but I am told that magistrates and those judges of the courts in the county of Philadelphia take acknowledgments and do certain other ministerial acts for which fees are received, which are their personal emoluments, and I am informed that as to the country at least these emoluments ought to be permitted. That being so, I suggest no further change in this article.

The CHAIRMAN. The Chair accepts the amendments.

For the information of the Committee the Secretary will read the section as amended.

The Secretary read the section as follows:

Section 12. The general assembly shall divide the county of Philadelphia into eighteen numbered districts of compact territory, as nearly equal in population as shall be possible. After each United States decennial census the court of common pleas may change the boundaries of any districts and may create new districts, the number of which, however, together with the districts in existence, shall never exceed more than one for each one hundred thousand of population of said county.

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Vacancies in the office of district peace judges shall be filled by the Governor.

The said judges shall receive a salary for all services rendered in any judicial proceeding, which shall be in lieu of all other compensation, and which shall be fixed by law and paid by the county. All fees received for any such services shall be paid into the county treasury for the use of the county.

Magistrates now in office shall serve out their unexpired terms, after which time the office of magistrates and magistrates' courts in Philadelphia are hereby abolished.

The general assembly shall, upon the adoption of this Constitution, enact such laws as may be necessary to fully carry into effect the several provisions of this section.

On the question,

Will the Committee adopt the substitute as amended?

It was adopted.

The CHAIRMAN. The Chair is informed by the Secretary that all matters on the calendar have been disposed of and that all the sections of the old Constitution have been acted upon by the Committee of the Whole.

COMMITTEE OF THE WHOLE RISES.

The Committee of the Whole then rose and the Chairman reported the tentative draft of the Constitution, in accordance with the instructions of the Committee of the Whole, with the recommendation that it be printed in the Appendix.

The CHAIRMAN. In accordance with the recommendation of the Committee of the Whole, the tentative draft of the Constitution will be printed in the Appendix.

ADJOURNMENT.

Mr. FISHER. Mr. Chairman: I move that the Commission do now adjourn until 11.30 o'clock A. M., Tuesday, April 6, 1920.

Mr. ALTER. Mr. Chairman: I second the motion.

Whereupon, at 5.40 o'clock P. M., the Commission adjourned until 11.30 o'clock Tuesday morning, April 6, 1920.



